EMERGENCY
COMPLAINT AND REQUEST FOR LEGISLATURE/CONGRESS INTERVENTION;
ALSO REQUEST FOR INVESTIGATIONS, HEARINGS AND FINDINGS[1]

COMES NOW Vogel Denise Newsome before the United States Legislature and United States Congress ("Legislature/Congress") and submit to it this, her, *Emergency Complaint and Request for Legislature/Congress Intervention; Also Request for Investigations, Hearings and Findings* ("instant Complaint") pursuant to her rights secured/guaranteed under the United States Constitution, Civil Rights Act and/or other statutes/laws governing said matters. This instant Complaint is supported by Exhibits. Some of said exhibits may be pleadings and/or documents referencing supporting materials; however, for recordkeeping purposes and to keep the volume of this instant Complaint a minimum, the pleadings and/or documents only are provided in that I believe there is sufficient evidence to provide the Legislature/Congress with information as to where additional information may be retrieved. While this is not the standard form I rely upon in filing complaints, due to the nature of the supporting documents being in the proper format, I hope that the form used in this instant Complaint is sufficient. In support of this instant Complaint I state the following:

JURISDICTION

The jurisdiction of the Legislature/Congress over the matters addressed herein and the parties addressed is established and/or can be maintained under the United States Constitution and/or any and all supporting statutes/laws supporting the relief sought herein.

This instant Complaint is being sought in good faith and the exercising of my rights secured under the United States Constitution, Civil Rights laws and/or any and all applicable statutes/laws governing said matters.

INTRODUCTION

My name is Vogel Denise Newsome and I am an African-American female, college educated – a graduate of Florida A&M University, with a B.S. degree. I am presently employed with a law firm (which has been in practice for over 50 years) in Ohio as a Legal Assistant. I am a citizen of the United States and I currently reside in the State of Kentucky.

Why am I contacting you? Because it is ***imperative*** and of an utmost **URGENT** NATURE that the Legislature/Congress make an ***EMERGENCY*** *INTERVENTION* in matters that I am dealing with that has not only affected my life, but those of other African-Americans and/or persons of color. The racial and judicial injustices addressed herein are ***crucial*** and should not be overlooked and/or ignored. I request that the Legislature/Congress do not get discouraged by the length of this correspondence or its volume because the information contained herein is RELEVENT/PERTINENT and is CRUCIAL/CRITICAL in nature to aid in

[1] Boldface, italics, underline, etc. used for special emphasis.

the initiation of **INVESTIGATIONS** and **HEARINGS** to be held on the matters addressed herein. **PLEASE DO NOT ADVISE THAT THE LEGISLATURE/CONGRESS CANNOT GET INVOLVED – THE SATUTES/LAWS OF THE UNITED STATES ADVISE OTHERWISE!**[2]

CHANGE:
THAT WORKS FOR YOU!!

My concern is that the Legislature/Congress may be suffering from the "Ostrich" syndrome (leaving its head stuck in the sand) and perhaps knowingly ignoring the racial injustices of our ***judicial*** system as well as the government agencies/entities designed to deter such unlawful/illegal and unethical practices addressed herein. This being the reason I am contacting you. **Please be advised that prior to bringing this matter to you, an investigation will yield I sought to bring matters to the attention of the proper government entities to no avail.** Moreover, that it has now gotten to the point that to continue to contact the proper authorities would prove to be *futile* because this situation has gotten way out of control and the racial/discriminatory treatment has *escalated* and ***infiltrated*** the courts/judicial system and government agencies. Moreover, has resulted in needless increase of expenses/litigation for purposes of financial devastation to me.

The continued violation of my Constitutional Rights, Civil Rights and other protected rights secured/guaranteed under the governing statutes/laws created, is clearly unacceptable and **is not** to be tolerated. The Legislature/Congress may agree that African-Americans and/or people of color have suffered way too long from the racial injustices by judicial officials, government officials and others. While their complaints and voices go out, they are repeatedly

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[2] *Berry v. American Express Pub., Corp.*, 381 F.Supp.2d 1118 (2005) - Where source of legal authority is statutory and not constitutional, Congress retains ability to create and direct law, so long as it is consistent with constitutional principles, and it is particularly important for court to follow that directive.

Overlie v. Owatonna Independent School Dist. No. 761, 341 F.Supp.2d 1081 (2004) - Once Congress addresses a subject, the lawmaking authority of federal courts is greatly diminished.

Bruner v. U.S., 340 F.Supp.2d 1204 (2004) - Congress is invested with a wide discretion, and its action, unless purely arbitrary, must be accepted and given full effect by the courts.

Page v. Shelby, 995 F.Supp. 23 (1998) - ***Vindication*** *of public interest* in governmental observance of Constitution and law is function of Congress and President, not judiciary.

Henrietta D. v. Giuliani, 21 A.D.D. 329 (1996) - District court may enjoin executive or legislative action if that action is unconstitutional or violates statutes or regulations.

Northwest Airlines, Inc. v. Transport Workers Union of America, AFL-CIO, 101 S.Ct. 1571 (1981) - Federal lawmaking power is vested in the legislative, not the judicial, branch of government and, therefore the federal common law is subject to the paramount authority of Congress.

Doe v. McMillan, 93 S.Ct. 2018 (1973) - A court ***has no authority*** to oversee judgment of a congressional committee in regard to what matter to include in reports prepared within the legislative sphere or to impose liability on its members if the court disagrees with their legislative judgment. U.S.C.A.Const. art. 1, § 6, cl. 1.

subjected to racial injustices by the very government entities they are led to believe are there to provide equal protection of the laws and due process of the laws under the United States Constitution and other statutes/laws of this country. While there is a slogan, ***"don't take the law into your own hands, take them to court;"*** from the evidence contained herein, I believe the Legislature/Congress will find that the very courts and/or government agencies to which one is to go for justice and legal recourse appear to have *employees who are* **CORRUPT** *and* **TAINTED!**

I believe it would be *futile* to contact the Senators and Representatives for the States involved here because from my research their states rank in the **top** *five (5)* as the **MOST CORRUPT** *states* for corrupt public officials. Therefore, I have very serious concerns that they would do anything in that they may want to assure they keep their "*bread buttered on the right side*" – it being to their and others advantage to cover-up such legal wrongs/injustices and to allow such corruption and unlawful/illegal actions against African-Americans and/or people of color to continue. (See **EXHIBIT "1"** - *"Article Louisiana Corrupt State in the Nation, **Mississippi** Second . . .,"* attached hereto and incorporated by reference. Also for Legislature/Congress review is a June **1, 2006** letter I received from Senator Thad Cochran which provides:

> This appears to be a private, legal matter. However, in an effort to be of assistance, I have contacted the proper Office of the Attorney General officials on your behalf. As soon as I receive a report from them, I will get back in touch with you.

See **EXHIBIT "2"** attached hereto and incorporated by reference.

NOTE: Unless Cochran's follow-up correspondence was misplaced, to date I have not heard anything from him or the Attorney General's Office. Moreover, there are statutes/laws in place to support that the Legislature/Congress may get involved. Leaving me with very serious and valid concerns as to what ties/relationships Cochran may have with the parties involved in the conspiracy leveled against me.

Therefore, I am contacting the Legislature/Congress to request **Investigations**[3] into the

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[3] *McGrain v. Daugherty,* 47 S.Ct. 319 (U.S.**Ohio**,1927) - Power of inquiry is essential and appropriate auxiliary to legislative function. . . . Congress may inquire into private affairs and compel disclosures only in so far as to make express powers effective.

Watkins v. U.S., 77 S.Ct. 1173 (1957) - Power of Congress to conduct investigations is inherent in the legislative process, and is broad. . . . . Congress, through its committees, may obtain any information it needs for proper fulfillment of its role, and is free to determine the kinds of data that should be collected; it is only investigations conducted by use of compulsory process that give rise to the need to protect rights of individuals against illegal encroachment. 2 U.S.C.A. § 192.

Clark v. Board of Ed. of Shelbyville, Ky., 350 F.Supp. 149 (1972) - Courts **may not** invade the domain of the legislature; where a plaintiff is asking for legislative relief or relief which would encroach on the legislative process the courts are without power to act.

Adams Express Co. v. Young, 211 S.W. 407 (1919) - In view of Const. §§ 27, 28, delegating to the legislative department the power to legislate, it is the duty of the court to interpret and not make laws.

Ashland Oil, Inc. v. F. T. C., 409 F.Supp. 297 (1976) - Although the **investigatory** power of Congress is penetrating and far reaching in scope, it is not unlimited. U.S.C.A.Const. art. 1, § 1 et seq.

matters presented herein, that **Hearings** be held and **Findings** be recorded. Moreover, that the necessary laws be created, enacted and amended (if necessary) to correct the wrongs complained of herein.

As for me, the racial and judicial injustices have plagued my family for approximately 112 years or more. Moreover, such injustices have plagued African-Americans and/or people of color for quite some time. **IF** the Legislature/Congress has its head stuck in the sand, I ask that it remove it, look around, and deal with the ever pending problems facing African-Americans and/or people of color while they consistently strive/hope for and demand ***equal*** protection of the laws and ***due*** **process** of laws as guaranteed by the United States Constitution and/or other governing statutes/laws. *That the depiction of the blindfold on the* ***Statue of Justice*** *is honored and justice rendered accordingly.* Through this instant correspondence, I am requesting the Legislature/Congress **Investigate,** *gather evidence*, hold **Hearings** and render its **Findings** on the criminal and civil wrongs rendered against me that affected my Constitutional and Civil Rights addressed herein as well as in the record of the courts, government entities, former employers and others. Moreover, Investigate, *gather evidence* and hold Hearings and render their Findings on the unlawful/illegal and unethical practices of **certain** *Whites* (in that it would be probably unfair to say **"White America"** in that this is commonly used term when addressing issues as those set forth herein) *to use officers/employees of the judicial system and/or the government to aid in the* ***oppression*** *of African-Americans* and/or people of color and to deprive them equal protection of the laws and due process of laws – rights secured/guaranteed under the U.S Constitution. ***I believe a reasonable mind would conclude how DIFFICULT it is for one to***

Nixon v. Administrator of General Services, 408 F.Supp. 321 (1976) - Congressional power to **investigate**, although limited to areas in which Congress possesses legislative authority, is both broad and integral to the legislative process.

McGrain v. Daugherty, 47 S.Ct. 319 (U.S.Ohio,1927) - Congress may inquire into **private** affairs and compel disclosures only in so far as to make express powers effective

American Federation of Government Employees, AFL-CIO v. U.S., 330 F.3d 513 (2003) - Incident to its lawmaking authority, Congress has the authority to decide whether to conduct **investigations** and *hold* ***hearings*** to gather information.

McDonnell Douglas Corp. v. U.S., 754 F.2d 365 (1985) - Congress has implied as well as express powers incident to its duty to legislate wisely, including power to investigate.

U.S. v. McDonnell Douglas Corp., 751 F.2d 220 (1984) - Power to **investigate** is necessarily incident to Congress' power to legislate.

Watkins v. U.S., 77 S.Ct. 1173 (1957) - Power of Congress to conduct investigations is inherent in the legislative process, and is broad.

Watkins v. U.S., 77 S.Ct. 1173 (1957) - Congressional power of investigation is not unlimited and there is no general authority to expose the private affairs of individuals without justification in terms of the functions of Congress.

Braden v. U.S., 272 F.2d 653 (1959) - Investigations can be made by Congress only as to matters which are proper subjects for legislation by it, and there is no congressional power to expose for the sake of exposure.

Marcello v. U.S., 196 F.2d 437 (1952) - A congressional inquiry may **be as broad** as the legislative purpose requires.

Raney v. Stovall, 361 S.W.2d 518 (1962) - That legislature may make wrong decision is no reason for invasion by judiciary of exclusive domain of legislature; ?and court must assume that Senate **will not** ***knowingly permit violations*** *of* ***constitutional*** *provisions.*

obtain the evidence and testimony produced in the records of the courts/government agencies to support the civil and criminal wrongs addressed herein and/or in the courts', government entities' records and former employers' record.

I believe because of the attacks that have been leveled against me by **certain** *Whites* and their co-conspirators, to slander my name and character in efforts of destroying my life, it is necessary to provide you with facts/evidence/feedback I have received from others that I have worked with and are familiar with my work ethics and character:

A. ***Beginning first with test results to support my computer skills and the ability to effectively and efficiently use software applications of employer – skills required in the performance of my job duties/responsibilities***:

Alphanumeric – 8844 kph / 2% error rate
Typing – 60 wpm / 1% error rate
Word 97 – 100 overall (100 on basic, intermediate & advanced)
Excel 97 – 100 overall (100 on basic, intermediate & advanced)

See **EXHIBIT "3"** attached hereto and incorporated by reference.

B. ***References obtained from those who have had an opportunity to work with me***:

This letter is to confirm and recommend Ms. Vogel Newsome to a position of Executive Assistant, Administrative Assistant or greater. While working with Lash Marine, she performed the duties of Executive Assistant with skill and energy. Her spirit and motivation acted as a beacon of light to others. Her leadership and training of others was a great service. Always willing to share; she possess a unique ability to teach complex skills to the beginner and bring them quickly up to speed. In addition, being a caring and concerned citizen she put aside her time to train and work with Training, Inc. employees to develop their office skills for a better future.

She is an asset and will be sorely missed at Lash Marine. -- ROBERT K. LANSDEN (**VICE PRESIDENT**)

I have been very, very pleased with Vogel, not only in terms of her work product, but also in terms of her attitude and personality. I would rate her as one of the best legal secretaries with whom I have ever worked. I would highly recommend her to any one who is looking for a full-time legal secretary. If my previous secretary were not rejoining me, I would want Vogel to be my new permanent secretary.

If any one would care to discuss Vogel with me, please do not hesitate to give them my name and number. I will be more than happy to talk with them.

I am not certain of the exact day when my previous secretary will rejoin me. It could be immediately, or, it could be a couple of weeks. In light of that, we would like to request that we be allowed to continue to work with Vogel until further notice. However, the last thing I want to do is have Vogel miss another good opportunity that might lead to permanent employment. Therefore, if she must be reassigned, I will understand, but grudgingly so.. . . - - RALPH B. GERMANY, JR. (**ATTORNEY**)

I was first introduced to Ms. Newsome over five (5) years ago. Since that time, she has been a Woman of integrity and intelligence. Ms. Newsome always has presented herself in a professional manner and has always addressed me and others with the uttermost of respect. Ms. Newsome outgoing personality and personal strengths would make her an excellent additional to anyone's staff. I have had the opportunity to work with Ms. Newsome and she has demonstrated flexibility in working outside of her field of endeavor and doing an excellent job is a strong indicator of how well she will do in her chosen field of endeavor. Ms. Newsome demonstrated a willingness to perform any task assigned to her promptly and correctly with little supervision. Ms. Newsome is a very pleasant person to associate with, works as a team player, and would truly be an ASSET to your organization because she is the best one for the job. - - LISA J. WASHINGTON (**COORDINATOR**)

See **EXHIBIT "4"** attached hereto and incorporated by reference.

I believe you will find from the evidence contained herein (as well as from Investigations initiated by the Legislature/Congress regarding the matters brought to its attention), that before bringing this matter to the Legislature/Congress' attention, I have in ***good faith*** sought justice through several/various avenues, to no avail. Thus, leaving me to bring these matters before the Legislature/Congress – back to the ***doorsteps*** of the lawmakers and/or those whose duties it is to see that such racial injustices and judicial abuses, etc. are addressed and the applicable laws created and/or applied to correct such wrongs are enforced. *Moreover, the Legislature/Congress' **intervention** and exercise of **jurisdictional** powers to direct and enforce the laws enacted and/or created by it. I **sincerely** request that you do not falsify a response to me and advise that the Legislature/Congress cannot get involved because this is a **"private"** matter and/or there is* **"pending" litigation,** *because I have researched and continue to do so and find **that the Legislature/Congress may intervene**.* Moreover, from the hearings that are held and played in the media clearly reveals the jurisdiction and authority the Legislature/Congress has to intervene and require investigations and hearings on matters that affect citizens/public and to make such express powers effective – as in my situation and others.

To understand my present and past struggles/challenge, I believe the following facts are pertinent:

I. REV. MILLIGAN NEWSOME

Milligan Newsome ("Milligan") is my great grandfather whose life was unjustly taken by a ***prominent*** *white* man in his community. Milligan was a very special young minister in his time, that through the strength of empowerment for himself and for God's people, it became embedded in his heart, thoughts and actions. Who knew that when his life would be unjustly taken, he said "I will stand tall like a giant for my God." While I did not have the pleasure of meeting my great grandfather I realize the Holy Spirit within him works within me today. As told in my Aunt's book, *"Naomi's Story: You Don't Have to Be Broken,"* my great grandfather's life was unjustly taken as told as follows:

> I learned that Rev. Milligan Newsome, her husband and my grandfather, was a special kind of person who took God's work very seriously. He was a preacher, educator, teacher, and one who felt that it was his duty to look out for all those who lived in Spindle Bottom. Everyone loved and depended on him. All of this land around our houses, church, and school once belonged to him. He, along with one deacon, built Clark Creek Church and school. He was supported by two very powerful men of God, Rev. Charles Harrison Mason and Rev. Charles Price Jones.
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> "When the ***white*** community *saw the* ***progress*** *that your grandpa was making*, they tried to force him to sell all of his land. He refused to even discuss it with them. He then bean to advise others not to sell their land."
>
> . . ."Naomi, your grandfather was a wonderful, stubborn, black Indian, God fearing preacher who did not fear what man could do to him.
>
> "Within a year the head of a prominent ***white*** family came to him and let him know that if he did not sell his land, he would be killed. Your grandfather, looked him straight in the eye and said, 'If I don't sell, you're going to kill me. If I sell, you're still going to kill me. Therefore, I'm going to die standing like a giant for my God.'
>
> " Shortly after this encounter, your grandfather went down to the covered bridge to cut firewood. Your papa, who was only seventeen years of age and very devoted, went with him. The man who had voiced the threat came by the house and asked me where had that **nigger** gone. He was carrying a rifle and a baseball bat. He stated the he only wanted to talk to that stubborn boy. I made the mistake of letting him know where they had gone.
>
> "As the ***white*** man walked away from me, I knew within my heart that your grandfather would be killed. When he found your grandfather and shot him, your papa stood and watched. Your papa helped his dad to climb into the wagon. Your grandpa always carried the Holy Bible with him. He took the Bible from the wagon and stumbled into the house to let me know that he had

been shot. Your papa and I put him in the bed. He asked me to place the Bible under his pillow, but he could hardly speak as he said, ***'My love, teach our five children not to hate anyone.' He then gasped for breath and fell asleep."***

. . . "To this day, I feel so guilty. I knew that your papa would never be the same. He seemed to be falling apart. He was truly a broken young man."

. . . "Within a year after this, the man who murdered your grandpa took all of the land. He went around bragging about how he had killed that **nigger** Indian and then took his land. There was no law in Mississippi that would help the family. They were left at the mercy of the murderer.

"About two years later, the murderer offered to give back ***part*** of the land. Your grandma refused to accept the offer. She said that ***she wanted all*** or none. None is what she received. Within this same year, the murderer entered the hospital in Vicksburg, Mississippi. He was suffering and dying from cancer that had consumed his whole body, including his brain. The word got around that as he was dying, he continued to scream these words, "I'm sorry that I killed that nigger Indian preacher for nothing.' Still the law did nothing about it."

Excerpt from Naomi Brookins' book, "*Naomi's Story – You Don't Have To be Broken* "at pp. 8-10. (See **EXHIBIT "5"** attached hereto and incorporated by reference)

Such a tragedy witnessed by my grandfather (Carrence Newsome), who is my father's dad, at such an early age which impacted not only my grandfather's life but those of his children. Who would have known that three (3) generations **later** such racial injustices would continue to plague our family and **certain** *Whites* would continue to use their ties, relationships and prominent connections to **deprive me of not only my property and possessions** but ***EQUAL*** *protection* of the laws and ***DUE PROCESS*** of laws – rights guaranteed/secured under the Constitution, Civil Rights Act and other governing laws. For me, my situation (the unlawful/illegal taking of my property/residence) happened on **February 14, 2006**, in Jackson, Mississippi where I was unlawfully/illegally removed from my property and it taken over my peaceful objections and right to defend (under the Constitution) against such actions. *However, in regards to the racial injustices against me, it has been well over **20** years.*

While my Aunt writes in her book, "There was no law in Mississippi, that would help the family," and while there was a death-bed confession from my great grandfather's murderer, my Aunt continues on and writes, "Still the law did nothing about it." As I believe you will find from the evidence presented herein, such practices continues today. *However, I believe there were laws then that perhaps they were not aware of (surely the **Constitution**), as now, that are to be applied and such wrongs corrected and the property illegally taken from my great grandparents returned to my family.*

> **THEREFORE, I am requesting** an investigation into the murder of my great grandfather and, that if it is found that his land was illegally/unlawfully taken through criminal wrongs, that said land is returned to my family.

II. JENA 6

I mention this case, because it is a classic example of how the courts do not equally apply the laws when parties are *Whites opposing African-Americans. Moreover, how courts use their powers to render African-Americans harsher punishment as well as fabricate the facts to cause such injustices. Statistics has provided such proof.*

I have further concerns that the unlawful/illegal and unethical acts of the Courts mentioned in this correspondence as well as other documents in its possession, will further demonstrate the *bias/prejudicial* treatment and/or handling of cases by **"certain"** *Whites* and in keeping with concerns of how *Whites* in **"prominent"** positions, wealth, authority, etc., abuse the judicial process to render special favors for other **white** parties in litigation involving African-Americans and/or people of color; or use their position, powers, resources, wealth, etc. to intimidate, threaten and coerce African-Americans and/or people of color to participate in civil/criminal wrongs through the fear of losing their jobs. Wherein when the courts mentioned herein were in the position to deter such unlawful/illegal practices and uphold the Constitution, Civil Rights and other governing laws, they clearly elected to abandon such responsibilities to render injustices to African-Americans and/or people of color. Take for example the comment made by the District Attorney as to what he can do simply with a *"stroke of a pen,"* that made the news in the Jena 6 matter which resulted in some of the feedback as follows:

> **THE CASE OF THE JENA SIX: BLACK HIGH SCHOOL STUDENTS CHARGED WITH ATTEMPTED MURDER FOR SCHOOLYARD FIGHT AFTER NOOSES ARE HUNG FROM TREE:**
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> MICHELLE ROGERS: The kids didn't say anything. They were listening. The kids were quiet. And so, District Attorney Reed Walters, you know, proceeded to tell those kids that "*I could end your lives* with the stroke of a pen." And the kids were just—it was like in awe that the district—you know, Reed Walters would tell these kids that. He held a pen in his hand and told those kids that, *"See this pen in my hand? I can end your lives with the stroke of a pen."*

(Cut and pasted from: http://www.democracynow.org/2007/7/10/the_case_of_the_jena_six)
JENA 6: A TEAM OF LAWYERS TAKE ON MYCHAL BELL'S APPEAL:

> **Quick summary of the Jena Six case:** In Jena, Louisiana, a black student challenged the de facto segregation of his high school by *asking* ***permission*** to sit under the "**white** tree." School

officials told him to sit where he liked. The next day three nooses hung from the tree, which triggered an impromptu protest by the black students of Jena High. LaSalle Parish District Attorney Reed Walters, flanked by the police, informed the black students at an assembly later that day that he could end their lives "with the stroke of a pen." Racial tensions grew, the school's academic wing was burned, and Robert Bailey, a *black* student, *was* ***attacked*** by a group of whites at a party. One person was charged with a misdemeanor for that beating. The next day Bailey and two friends were ***threatened with a shotgun*** at a convenience store by a *white* man **who had been present** at the beating. They wrestled the gun away from him and *ran to* ***report*** *the incident to the police*, who *charged* ***them*** with robbery of the shotgun. Finally at school two days later, a group of white students, including the noose hangers, taunted Bailey and other students, calling them **"niggers."** A *white* student was beaten by a group of black students, taken to the hospital and released within three hours. He *attended* a school function ***that night***. Six black students were charged with second degree attempted murder for the fight. The first to be tried was Mychal Bell, whose **public** defender put on no case, called no witnesses, and permitted a friend of the DA, the mother of a prosecution witness, and a good friend of the victim's mother, to be empaneled on the six person jury. Bell was **quickly** found guilty. Robert Bailey, Theodore Shaw, Carwin Jones, and Bryant Purvis are still waiting to be tried. The sixth of the Jena Six is in the juvenile justice system.

(Cut and pasted from: http://pursuingholiness.com/2007/07/29/jena-6-a-team-of-lawyers-take-on-mychal-bells-appeal/). It is interesting to note how the incident was **turned around**. I *believe had the white man shot them (these young men)*, it may have been said *he was* ***defending*** his property, etc. and justification for such shooting based upon that. Furthermore, look at how the ***deck was stacked*** against these young men.

WITH THE STROKE OF A PEN

The events in Jena highlight the urgent need to significantly restrain *prosecutorial* discretion.

Tensions escalated: **An assault** on five black teens by a white man *was resolved with probation and a mere wrist-slap for the perpetrator*, and in a vaguely Mafioso speech seemingly directed at the black students in particular, the district attorney warned that he could end students' lives "with the stroke of a pen." Finally, on December 4, 2006, the eponymous six black students beat up one white student, who had allegedly mocked the injuries of one of black teens injured in the preceding month's assault.

(Cut and pasted from: http://www.hippolytic.com/0112/with_the_stroke_of_a_pen.html)

> "Black students protested the ***light*** *sentence given to the* ***white*** *students* and were promptly threatened by the county's district attorney who said "See this pen? I can end your lives with the stroke of a pen."
>
> That's a powerful statement. Its a frightening one. It stands for so much of what can go wrong with our justice system. The widely acknowledged racial biases in sentencing. The fact that lives are literally flushed down the toilet needlessly out of some misguided sense of judicial revenge. The power gap between the accused and the system that can crush them completely.

(Cut and pasted from: http://fitnessfortheoccasion.wordpress.com/2007/09/20/i-can-end-your-lives-with-the-stroke-of-a-pen/)

While Jena 6 occurred in *Louisiana*, it is **No. 1** on the report released on October 8, 2007, by the National Press with **Mississippi** (who was **No. 1** on **prior** report) as **No. 2**, *Kentucky* **No. 3**, and *Ohio* rounding out at **No. 5**. Moreover, I believe a reasonable mind given the facts, evidence and legal conclusions presented herein, in the records of the Court, Government Agency and others, will support an Investigation and Hearings sought through this Complaint. However, on a prior report, Mississippi ranked No. 1. See **EXHIBIT "6"** attached hereto and incorporated by reference.

I must admit that when the News of Jena 6 came out, I was shocked to hear of the **"white"** ***tree***. Why, because there was a label for such a tree where I went to High School – Utica High School (which has since been closed). To hear that such a labeling of a tree still existed over 20 years later, I found appalling and a disgrace. Confirming nothing has changed in the South. Leaving me to conclude why there is a breakdown in the rearing of some of our children and how some parents are teaching and encouraging such racial division. Moreover, why the youth seem to have no regard and/or respect for the laws – and their lack of trust in the justice system

III. CARL BRANDON ("BRANDON")

Mr. Brandon is an African-American male. Brandon alleges he was set up for *political* reasons in that *Whites* wanted his job and a person of their choosing in the position, so they concocted and/or fabricated false charges of sexual harassment against him. Brandon asserted that the sexual harassment charges were false and apparently exhausted the legal process to the best of his knowledge. To no avail.

According to Brandon and/or sources who know him, *he was being* ***stalked*** *by those who were determined to* ***destroy his life***. However it does not appear that this is not information those in

the media were willing to investigate – to find out the true motive for Mr. Brandon's shooting spree. However, stories were shared such as:

> Ed Blackmon Jr., attorney for the former Claiborne County road manager, said while the defense "won't dispute the facts as laid out by the state," psychiatrists and psychologist will be called to testify Brandon was not capable of controlling his actions. Pent-up emotions stemming from a sexual harassment accusation nine years before the 30-minute spree in 2006 were too strong to resist, Blackmon said. . . .
>
> "The evidence will show the man was mad," said Scott Johnson of the Attorney General's Office, who is joining Claiborne County District Attorney Alexander Martin and Crystal Springs attorney Marty Arrington in presenting the case. "There's a big difference between being mad and being insane." . . .
>
> Burrell, Miller and Porter all had roles in the 1997 dismissal of Brandon, who for years said he had been wrongly accused in order for political change to be made in county employment.
>
> His wrongful termination case made it to the Mississippi Supreme Court, which refused to hear the matter in 2002, which had the effect of upholding the firing. . .
>
> .
>
> Burrell, who was 54, had practiced law in Port Gibson for 30 years and was attorney for Claiborne supervisors for 26 years. He also held a position on the **professional responsibility** committee of the **STATE BAR** association.[4]

See **EXHIBIT "7"** 05/31/07 Vicksburg Post Article regarding Carl Bandon. It appears that other persons were aware of the unlawful/illegal actions against Brandon, as such stalking him from job-to-job is mentioned.

While others may want to see Burrell as a victim of Brandon's shooting spree, and Burrell's story as a tragedy, one may wonder if the true facts and information which lead up to the shooting by Brandon were told, would Burrell be seen as a victim at all or a predator. *Moreover, did Burrell aid and/or contribute in the bringing about of his own death through committing and/or* ***participating in criminal/civil wrongs*** *against Brandon – wherein there were those who sought to destroy Brandon's life.* From information provided, it appears there were those who were following Brandon from job-to-job and informing employer(s) of the sexual harassment charges brought against him. (EMPHASIS ADDED). **No, it was not enough that Brandon had lost his job due to such accusations; because it appears there were certain people determined to keep Brandon oppressed and to keep him from working – actions deliberately done to affect his livelihood, pursuit of happiness, liberties, etc..** Persons (apparently associated with wealth, power, ties to government entities and/or holding positions

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[4] **A position I find very interesting in that I believe it may lead a reasonable mind to conclude that *Burrell may have used his position, relationships and ties to affect* the outcome of agency/court actions and/or hearings brought by Burrell to clear his name.**

with the said entities) not satisfied until they completely ruined Brandon's life – **at whatever cost**. Apparently Brandon was aware that Burrell and others were in on such criminal/civil wrongs against him – it is not like Port Gibson is a large mega (*metropolitan*) city or anything. *Those participating in such criminal/civil wrongs against Brandon knew and/or should have known what consequences may have resulted **as a direct and proximate result** of their unlawful/illegal actions*. However, they probably thought it was funny in destroying and playing with an African-American man's life in the manner in which they were. Such unlawful/illegal acts which after years of such wrongs, Brandon simply had enough. Brandon may have experienced how money and power could buy decisions and the entities in which he contacted to address what he believe were wrongs rendered him, were **CORRUPT** and/or **TAINTED**. While Brandon may have pulled the trigger on the gun "**placed in his hands**" at the direction and/or as a direct and proximate result of such civil/criminal wrongs that were executed against him through such stalking, predator behavior and harassment from job-to-job, those who participated in the conspiracy to destroy Brandon should be held accountable for their roles in the unlawful/illegal stalking of him and contacts made to his employer(s) which resulted in Brandon's firings/terminations. **Interfering with Brandon's life, liberties, pursuit of happiness, etc.** It appears that government officials were aware of the civil/criminal wrongs leveled against Brandon and may have participated in the carrying out of such unlawful/illegal actions and continuing in their "CORRUPT" practices until they achieved the goal/object pursued – destruction of Brandon's life and to see another African-American male in jail/prison, mental institution, etc. (Known acts to be deliberately done to destroy the African-American family – lock up the head (male) of the family and watch what happens). So it would be reasonable to determine what role (if any) Burrell played in the conspiracy leveled against Brandon to see that employers knew of the charges made against him. It is **IMPORTANT TO NOTE,** Burrell was employed as **County** Attorney (government job) for Claiborne County, Mississippi and also held a position on the professional responsibility committee (what a hypocrite if he was engaging in the civil/criminal wrongs to keep Brandon unemployed) of the State Bar Association. Pertinent information in that it goes to show the powers and influences Burrell and others may have relied upon in the unlawful/illegal and unethical practices Brandon and/or others were asserting were being taken against Brandon. Moreover, *Burrell's position(s) may have played a role in the outcome of the judicial/legal process in which Brandon pursued to clear his name*.

Brandon's situation may also warrant an investigation by the Legislature/Congress as to whether such wrongs were committed against him and, if so, that said persons be held accountable for their acts in bringing about and/or aiding in Brandon's reaching such a violent outcome. ***One may conclude that Brandon's life, liberty and pursuit of happiness, etc. was ruined as a direct and proximate result of the stalking, predator behavior and harassment that has been alleged of others to destroy his life***. While Brandon repeatedly asserted his innocence through the appropriate judicial processes, he may not have been aware of the Mississippi's reputation of having ***CORRUPT*** OFFICIALS – where special favors are known to exist. [**SUCH PRACTICES WHICH "CERTAIN" WHITES HAVE USED AGAINST ME TO DESTROY MY LIFE, MAY HAVE ALSO BEEN USED TO DESTROY BRANDON'S**]. Did such willful and malicious acts cause Brandon personal injury/harm to his character, reputation, property (loss, etc.) and whether there was evidence to support the sexual harassment charges brought against Brandon. Moreover, the relationships and/or interest of all involved (what did they get out of it) that brought and alleged

these charges against Brandon.

> **If the laws/statutes permit, I would request that the Legislature/ Congress initiate an investigation into this matter to determine whether such stalking of Brandon occurred. Acts which clearly violated Brandon's Constitutional and Civil Rights. That if there are any violations found, that the perpetrators be also brought to justice for their role the played.**

A. STALKING/HARASSMENT:

While I know that there are states that have enacted stalking laws, I have not had the opportunity research whether there are federal laws. However, from the story of Carl Brandon (and I am sure there are many others) and that of myself, as evidenced provided in this instant Complaint and in the record of the Courts and Agencies addressed herein, I am requesting the Legislature/Congress initiate Investigations and hold hearings and render their findings regarding the stalking, predator behavior, and harassment of me by ***certain*** Whites and other co-conspirators who have resorted to the same civil/criminal wrongs similar to that of Carl Brandon to subject me to such unlawful/illegal and unethical practices in efforts of destroying my life as they did to him. Acts which clearly affects the ***PUBLIC at LARGE*** – therefore requiring the Legislature/Congress' intervention to enact, create (if none exist) laws and direct and enforce compliance of same to deter similar tragedies as Burrell and hold such perpetrators (and their accomplices) accountable/liable for the roles they played.

While there have been numerous shootings as that of Carl Brandon (who just could not take the stalking and harassment of those who were following him from job-to-job and providing his employer with negative remarks/comments as it related to him), those committing such unlawful practices should be punished within the confines of the laws and prosecuted for their roles they played in destroying his life. Moreover, what evidence did the government agencies/court(s) have to sustain their findings of sexual harassment, *"was it **mere** words"* and did the fact finder(s) have *"**factual** evidence"* upon which to reach their conclusion – or was ruling based on **special** favors owed to Burrell and/or others.

The Courts in my situation, have **repeatedly** allowed opposing parties and/or their counsel to present information regarding me that is clearly unrelated to the lawsuits I have filed in the United States District Court – Southern District of Mississippi (Jackson, MS) ("USDC-MS"). Moreover, have allowed **certain** Whites, their counsel and others to attempt to paint/portray me as a *serial litigator* – the record evidence will support that such attacks have been launched by those who have been stalking and/or conspired with those who have been stalking me from job-to-job, attorney-to-attorney, city-to-city, etc. as I have tried to move on. However, **"certain"** whites have not been satisfied with this and have launched an all out conspiracy to destroy my life and to prevent me from obtaining employment elsewhere. While the laws are clear that such acts are unlawful, this has not stopped **certain** Whites from committing such criminal/civil wrongs against me. *What is so sad, these conspirators and their*

*co-conspirators have **engaged** not only Judges, Magistrates, government officials, but employers and their employees to participate in such civil/criminal attacks leveled against me.*

In pending actions in the USDC-MS, evidence has not only surfaced by my former employer (Page Kruger & Holland) as well as other counsel in the matters before said court to support their unlawful actions, but how they have somehow **managed to get the Judges and Magistrates to engage and participate in such unlawful/illegal and unethical practices.** While I have been more than patient, courteous, etc., and followed the appropriate avenues required to obtain redress of such criminal/civil wrongs, ***what else does a citizen need to do to obtain justice***?

B. CLARK MONROE:

Monroe is ***one of several*** White attorneys representing clients in civil actions I have filed (or has been filed on my behalf) in the USDC-MS. Upon receipt of the record in this action, Legislature/Congress will see not only how Monroe has personal contacts with the Judges/Magistrates, but launches attacks against me as well as my attorney through his pleadings filed on behalf of his clients or through correspondence to my attorney as well as Judges/Magistrate. While they have attempted to paint me as a *serial* litigator (the unwarranted and unsubstantiated labeling repeatedly used by **certain** *Whites* in their masking of the unlawful/illegal and unethical practices they have engaged in to destroy my life), my **March 12, 2007**, addresses my opposition to such labeling as well as my concerns regarding Mr. Monroe's **constant** *stalking, predator behavior* and *harassment* of me. *Moreover, provides sufficient evidence of how **"certain"** whites use their influence, power, wealth, etc. to smear/slander me and the use of the judicial process to portray me as **"the boy who cried wolf,"** when they are fully aware of the civil/criminal wrongs rendered me*. It appears Monroe (as well as others) has attempted to paint me as a *serial* litigator wherein such labeling is uncalled for and neither is it appropriate. I believe the Legislature/Congress upon the facts, evidence and legal conclusions presented will agree that such labeling of me as well as the stalking, predator behavior, harassment, etc. by this attorney and others is clearly prohibited by the U.S. Constitution, Civil Rights Act, statutes and laws of the United States. Nevertheless, that I have *had to **suffer** and endure **years*** of such unlawful/illegal attacks from those in such legal prominent positions, authority, wealth, etc., as they sought to destroy my life. See one of my March 12, 2007 letter responding to Monroe's correspondence (See **EXHIBIT "8"** attached hereto and incorporated by reference), and also in my responsive pleading (one of two filed in each of the cases before said court is attached at **EXHIBIT "9"** and incorporated by reference) to his motion filed. Monroe filed a Motion with the court requesting an "**in court hearing.**" However, I knew such filing was done in bad faith for ill purposes – to shield and mask his fetishes/obsession with me. Monroe was not satisfied with his efforts in having me forced to leave Mississippi to obtain employment elsewhere in order to survive, he now attempts to use the courts and others to aid him in such wrongs against me. **WHEN DOES IT STOP – WHEN ARE SUCH PERSONS COMMITTING SUCH UNLAWFUL/ILLEGAL WRONGS AGAINST AFRICAN-AMERICANS (AND/OR CITIZENS) GOING TO BE HELD LIABLE FOR THE CIVIL/CRIMINAL ACTS RENDERED AGAINST AFRICAN-AMERICANS (FOR THE RACIAL INJUSTICES SPEARHEADED AND/OR THEY ENGAGE IN)**?

Furthermore, the record evidence will support Monroe's communications and attacks on my attorney, Wanda Abioto, unbeknownst to me – my having to receive copies of such communications through pleadings filed by him on behalf of his clients. His outrage towards me is evidenced because he failed to obtain the ***unlawful*** withdrawal of my complaint he sought through my attorney. Abioto has been licensed to practice law for over 20 years. While Abioto ignored my calls and correspondence to her, I continued to file the required responsive pleadings in the lawsuit she is representing me in, in a timely manner. From the documentation, you will find how it appears Monroe and Abioto (and who knows what other people were involved) were working on her withdrawing from representing me – **behind my back** and/or *unbeknownst to me*. An unlawful/illegal and unethical tactic to deprive me of legal representation. Abioto, deliberately failed to have the Summons and Complaint served on one of the defendants in the lawsuit she was representing me in. Based upon documentation received from Monroe, I believe a reasonable mind may conclude that Abioto deliberately did so in efforts of ***throwing this case***. *The record evidence will reveal how upset Monroe became when his efforts failed in that upon my being* ***abandoned*** *by Abioto, I continued to see that the proper pleadings were filed in the lawsuit to preserve my rights*. Monroe proceeded to harass me as well as the court to get them to disregard the pleadings filed by me in the lawsuit Abioto was representing me in. However, such efforts failed. I provided the facts, evidence and legal conclusions to support my right to file such pleadings – especially when the record yields he and Abioto were working behind the scenes to throw the case. *Abioto fulfilling her end of the bargain with Monroe – it appears in not serving his client, and is now attempting to seek an unlawful withdrawal which I am contesting*. See **EXHIBIT "10"** attached hereto and incorporated by reference. However, to their disappointment, I handled service of process on the other defendants (which included another one of Monroe's clients, Melody Crews) through the use of a Process Server that I retained. Through his fetish and/or obsession with me, Monroe now has voluntarily entered his second client (who Abioto failed to serve) through joining and entering of a pleading filed on behalf of his first client, Crews (who I had served by the Process Server), that was properly served with the one Abioto failed to serve; thus, waiving service of process on second client and now second client has been properly joined in lawsuit due to the joint filing by Monroe – correcting the **egregious** acts of he and Abioto (in withholding service of Summons and Complaint). Therefore, waiving any such defects and/or deliberate acts on the part of Abioto to aid him. The court record will support that the required pleadings containing such facts, evidence and legal conclusions has been timely submitted. Monroe also knew that Abioto could not withdraw from representing me without my consent. ***It is unlawful/illegal and unethical to harass, coerce, etc. a person's attorney as Monroe and/or others have done in efforts of forcing her to abandon representation of me. Nevertheless, Monroe has engaged in such practices.***

I believe the Legislature/Congress may conclude from the evidence how "certain" whites resorted to unlawful/illegal and unethical practices against me to obtain withdrawal of attorneys I retained to represent me; however, upon contact from the opposing side (who were always represented by large law firms, corporations, insurance companies, etc.) they abruptly sought to end their representation of me. Leaving me to have to proceed pro se in efforts of preserving my rights secured/guaranteed under the Constitution, Civil Rights Act and other governing statutes/laws.

Monroe, wanted an "**in court hearing**," so hopefully he will be happy to subject to hearings before the Legislature/Congress and ***answer their questions*** and produce documents to aid in the Investigation(s) by it, ***as to his role*** *in the conspiracy he has engaged in*, in causing me serious injury/harm as a direct and proximate result of his knowledge of my participation in protected activities and/or my pursuit for justice. I am hoping that Monroe is just as *eager* to participate and provide the Legislature/Congress with the information needed to support his *unlawful/illegal* **stalking, predator behavior** and **harassment** of me as well as my attorneys. Moreover, his (and/or others) actions in contacting my employer(s) and notifying them of my participation and/or engagement in protected activities (i.e. lawsuits, etc.). I *seek* the **disbarment** of Monroe and his co-conspirators who are lawyers and/or members of the Bar in their respective states that they are allowed to practice; as well as he and conspirators/co-conspirators being subject to the **appropriate *fines* and/or *imprisonment*** for the civil/criminal wrongs committed against me. I believe that the Investigation requested by the Legislature/Congress will yield that Monroe (who received such honor as magna cum laude[5]) knew and/or should have known that his ***stalking, predator behavior*** and ***harassment*** of the me was in violation of the laws, Constitution, Civil Rights Act and other governing laws. (See Bio for Monroe at **EXHIBIT "11"** attached hereto and incorporated by reference). Nevertheless, he proceed on with much *zeal* and *tenaciousness* in that his ***fetish/obsession*** with me consumed his life – he took it upon himself to stop at nothing to see that my life was ruined as **well as solicited the help of others and USDC-MS Judges/Magistrates/ Officials to engage in such practices as he looked to them for "special" favors**.

MISSISSIPPI CODE OF 1972
SEC. 97-3-107. Stalking.

(1) Any person who willfully, maliciously and repeatedly follows or harasses another person, or who makes a credible threat, with the intent to place that person in reasonable fear of death or great bodily injury is guilty of the crime of stalking, and upon conviction thereof shall be punished by imprisonment in the county jail for not more than one (1) year or by a fine of not more than One Thousand Dollars ($1,000.00), or by both such fine and imprisonment.

(4) For the purposes of this section, "harasses" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or harasses the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the person. "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short,

[5] A title perhaps **purchased/bought** in that the record evidence will clearly support no qualification/evidence of earning of such honorary title. It appears that the only thing he learned in law school was how to practice law through corruption and deceit. **Moreover, how to mastermind conspiracies and induce/influence others to participate in his criminal acts which he knew and/or should have known to be unlawful/illegal and unethical.**

evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

(5) For the purposes of this section, "a credible threat" means a threat made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety.

SOURCES: Laws, 1992, ch. 532, Sec. 1; 1996, ch. 326, Sec. 1, eff from and after passage (approved March 17, 1996) Amended by Laws 2000, Ch. 553, Sec. 1, HB565, eff. July 1, 2000.

CUT & PASTED FROM: http://www.mscode.com/free/statutes/97/003/0107.htm. See **EXHIBIT "12"** attached hereto and incorporated by reference.

Monroe has committed civil/criminal wrongs – acts prohibited by statutes/laws of the United States – spearheaded and/or providing his participation in any such conspiracies against me. He has engaged in activity which includes stalking me from job-to-job, attorney-to-attorney, court-to-court, etc. Actions deliberately, willfully and maliciously done to get me fired (termination of employment), to get my attorneys to withdraw their representations, to get my complaints dismissed, etc. **ACTS *CLEARLY PROHIBITED BY STATUTES/LAWS***.

The record evidence will support that Monroe wanted his opportunity to be on stage – requesting an "**in court hearing**." Therefore, I am hoping his request to perform (before the fact-finders) is heard before the Legislature/Congress and he is as ***cheerful***, ***elated*** and ***forthcoming*** with his admissions of his participation of the criminal and civil wrongs rendered against me by him and others. The USDC-MS, defendants in that action and their counsel, were timely, properly and adequately notified of the LIABILITY that Monroe attracts and the casualty and/or destruction caused by him as a direct and proximate result of his civil/criminal wrongs. To no avail, they continued to aid and encourage Monroe's behavior. The record of the USDC-MS further evidences, Monroe's actions in harassing and threatening attorney(s) I retained to represent me. Such acts which are criminal in nature and clearly warrants punishment which I will seek through the bringing of this action before the Legislature/Congress.

Title 42, U.S.C., Section 3631
Criminal Interference with Right to Fair Housing

This statute makes it unlawful for any individual(s), by the use of force or threatened use of force, to injure, intimidate, or interfere with (or attempt to injure, intimidate, or interfere with), any person's housing rights because of that person's race, color, religion, sex, handicap, familial status or national origin. Among those housing rights enumerated in the statute are:

- The sale, purchase, or renting of a dwelling;
- the occupation of a dwelling;

- the financing of a dwelling;
- contracting or negotiating for any of the rights enumerated above.
- applying for or participating in any service, organization, or facility relating to the sale or rental of dwellings.

This statute also makes it unlawful by the ***use of force or threatened use of force, to injure, intimidate***, or interfere with any person who is assisting an individual or class of persons in the exercise of their housing rights.

Punishment varies from a fine of up to $1,000 or imprisonment of up to one year, or both, and if bodily injury results, shall be fined up to $10,000 or imprisoned up to ten years, or both, and if death results, shall be subject to imprisonment for any term of years or for life.

CUT & PASTE: http://www.**fbi.**gov/hq/cid/civilrights/statutes.htm. See **EXHIBIT "13"** attached hereto and incorporated by reference. It is important to note, that said information is already in the record of this Court.

Nevertheless, the record evidence will support how Monroe and others conspired to get my attorney(s) to withdraw to obtain an undue/unfair advantage in the legal actions brought by me. Furthermore, how **"certain"** whites and others have *repeatedly* used the legal process to destroy my life and/or those of African-Americans.

I believe that the record evidence will support the threats and acts taken against me by the Monroe and others for my exercising of protected rights. Moreover, that the unlawful/illegal actions of the Monroe and others, resulted in my being unlawfully/illegally forced out of my residence and said residence unlawfully/illegally seized. Moreover, that such acts by Monroe and others also has forced me to have to abandon the state in which I lived for my safety, survival and to obtain employment; in that they **aggressively** and **maliciously** sought to blacklist me and to prevent me from obtaining employment as well as destroy my life and reputation in the work community. Thus, subjecting me to further injury/harm.

MISSISSIPPI CODE OF 1972

SEC. 97-3-87. Threats and intimidation; whitecapping.

Any person or persons who shall, by placards, or other writing, or verbally, attempt by threats, direct or implied, of injury to the person or property of another, to intimidate such other person into an abandonment or change of home or employment, shall, upon conviction, be fined not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months, or in the

penitentiary not exceeding five years, as the court, in its discretion may determine.

SOURCES: Codes, 1906, Sec. 1398; Hemingway's 1917, Sec. 1141; 1930, Sec. 1173; 1942, Sec. 2416.

CUT & PASTED FROM: http://www.mscode.com/free/statutes/97/003/0087.htm. See **EXHIBIT "14"** attached hereto and incorporated by reference.

Whitecapping: The criminal act of threatening a person – usu. a member of a minority group – with violence in an effort to compel the person to either move away or to stop engaging in a certain business or occupation. • Whitecapping statutes were originally enacted to curtail the ***activities*** of the Ku Klux Klan. – Black's Law Dictionary (Second Pocket Edition)

I knew that with my education, years of work experience and skills, that it should not be difficult for me to obtain employment; however, seeing the conspiracy leveled against me and the evidence that has surfaced, there was no alternative left for me but to move away for my livelihood, liberties, pursuit of happiness, etc.

IV. REPUBLIC OF NEW AFRICA ("RNA")

From my brief research, this organization appeared to be organized and/or assembled by Gaidi Obadele and Imari Abubakari Obadele. Their AIM: (a) To **free** black people in the United States from ***oppression***; (b) To promote the personal dignity and integrity of the individual and to protect his natural rights; and (c) To support co-operative economics and community self-sufficiency. This group wanted to discuss the creation of a black nation within the United States (identifying Louisiana, Mississippi, Alabama, Georgia and South Carolina). They provided their citizens with: food, housing, clothing, education, medical treatment, and defense.

The **Federal Bureau of Investigations** ("FBI") *immediately* targeted the RNA and began raiding their meetings.

In August 1971, the FBI and the Jackson Police Department, without warning, attacked the RNA government residence with arms, tear gas, and a tank. **One** Jackson police officer, William Skinner, was killed, one patrolmen and an FBI agent were wounded but there were no RNA casualties . . . The RNA protested the arrests and verdicts, pointing out that the RNA 11 part of a ***"long pattern"*** of violence and injustice against Blacks in Mississippi.

See **EXHIBIT "15"** information on RNA - attached hereto and incorporated by reference.

While it is not clear to me why the raid on the RNA by the FBI was necessary, I however think such tactics used by the FBI may have been bogus and merely hatched to seek the results it obtained – breaking down and further **oppressing** African-Americans and those who sought the **unity, healing** and **improvement** of the African-American people and their communities. It is apparent that the FBI's action was merely tactics to keep African-American communities from coming together. Moreover, their use of such excessive force to send a message of their dominance and oppression.

While I do not have access to the entire record surrounding this incident (between RNA and FBI), I find it disturbing in that it appears that those who were not present were prosecuted. Moreover, concerns as to whether or not Officer Skinner was actually killed by an RNA member or *was he killed by* **"friendly fire"** – that of an FBI agent of Jackson Police Officer – and the FBI for all these years have lead the public to believe he was killed by an RNA members bullet. Such concerns I believe is valid in that the record evidence in my case will reveal that the FBI was provided with a typewritten complaint by me on June 26, 2006 (See **EXHBIT "16"** attached hereto and incorporated by reference), and did nothing to deter and/or punish those committing such legal wrongs against me. Moreover, to date, the FBI has failed to provide me with its findings on **all** of the issues raised in my Complaint. From the information I obtained from the FBI website, it is evident they handle the types of complaints I have filed and have moved to prosecute others in the past (in other matters brought to their attention); however, when I brought my complaint – as with other government agencies and courts – they **took a far departure** from the laws and refused to perform the duties owed to me. Thus, leaving a reasonable mind to conclude that there is something Judge Skinner and/or others may be holding over the FBI's head that they may not want coming out. It is clear that Judge Skinner has positioned himself in the courts and that he uses his judgeship to reek havoc on African-Americans and uses his **special** relationship with the FBI and others to commit such civil/criminal injustices against African-Americans (as that committed against me). Furthermore, **the FBI has *condoned* and/or encouraged the *unlawful/illegal and unethical actions* of Judge Skinner and others**. *Therefore, the Legislature/Congress' intervention and request for Investigation and Hearings is being requested to render its findings on the issues presented to correct the Constitutional and Civil Rights violations rendered me*.

I believe a reasonable mind may conclude that the FBI abused its power and/or authority in the RNA matter and that said matter should have been handled in a more peaceful and lawful manner. However, they probably had a **headstrong** leader looking for fame at the helm of things; and the FBI elected to exercise unnecessary force which resulted and/or contributed to the death of Officer Skinner. Were any of the FBI agents held accountable for Officer Skinner's death or an investigation initiated into its handling of this matter? It appears what is so obvious that the FBI motive for such invasion was for the purposes of keeping African-Americans from coming together for a positive cause – the FBI's goal being to break up the RNA to keep it from thriving and uniting the African-American culture. This group was not such a threat that such excessive force and/or violence against them was necessary. However, I am sure the FBI made sure this group was projected in such a light to Whites to place fear in them. Placing seeds of hatred and animosity in **certain** Whites as that displayed by Judge Skinner regarding the RNA. RELYING ON THE ***FEAR*** *FACTOR!*

Approximately a year later (1972), following such raid, my father retired from the United States Army and returned his family to Utica, Mississippi to live. Utica is approximately 21 miles outside of Jackson, Mississippi where the raid on the RNA occurred. While I was just a child and unaware of this incident taking place the previous year, I definitely enjoyed the "*Black Power*" movement and our song/slogan, "*Say it loud, I'm Black and I'm proud,*" as well as the Afro (hairstyle) age. The adjustment to Mississippi living was interesting in that we were taken from one way of life (military where we were surrounded by diversity of cultures) and then **thrown into such a *hostile* and *racially* motivated environment in Mississippi**. I recall our having to walk down the dirt road and wait for the school bus to pick us (siblings and I) up. While waiting we would observe a bus passing by loaded with all white children and some of those children from time-to-time yelling out racial slurs/remarks on their way to **Rebel** Academy (school they attended). Of course this was new to my siblings and I, leaving us often wondering why our father, out of the choices he had, chose to return to Mississippi to raise his family. I found the military life to be beneficial to me and the fact that my parents did not teach us to hate other races as that displayed by the children on the private school bus. **Such racial slurs/remarks** made me even *happier* to be an African-American (realizing that I had to be special and such a member of an elite race), moreover, more determined to continue my education beyond high school at an African-American University. *For I felt it is not where you get your education, but what you do with it once you get it. Therefore, I did just that; starting out a Mississippi Valley State University and completing my education at Florida A&M University*.

Considering the racial injustices I, Carl Brandon, Jena 6 victims and other African-Americans have had to repeatedly endure, was the RNA wrong for their ideas and pursuit to remedy the injustices of African-Americans and their cries for equal protection of the laws, due process of laws (JUSTICE), etc.? *Was this group wrong for wanting to make a better life for their people that the Legislature/Congress has repeatedly pretended and/or may have stuck their heads in the sand because they did not want to deal with it*? **What has our government done to assure African-Americans are rendered *equal* protection of the laws and *due process* of laws? Merely the passing of laws and not enforcing them clearly is a sham/farce in that it places false hope within citizens who want to believe the laws and the legal processes are in place to assure justice**. Moreover, deter the unlawful/illegal and unethical practices of ***certain*** Whites as evidenced herein and in the records referenced herein (that can be obtained through Investigations by the Legislature/Congress). It is clear that African-Americans are heavily underrepresented when it comes to privately-owned businesses; while we are represented in government (federal and state – depending on where you live I'm finding) jobs, **this is only where you will find many of African-Americans because of such policies which require hiring**. However, in looking at the other side in the ***private*** sector, you will find that African-Americans and/or people of color ***are not*** fairly and adequately represented with private employers – in some places with such employers the work force is **entirely** white (with no African-American and/or person of color). The only reason why you may see African-Americans and/or people of color at some predominantly owned businesses is because such businesses may have obtained some government contract (for appearance purposes only). However, there are many, many, . . . white privately owned businesses where they are certain not to hire African-Americans and/or people of color. While I look at the fight against "AFFIRMATIVE ACTION," I believe such fights are mainly lead by **"certain"** whites which

may have strong ties to racist organizations (such as the KKK). **"Certain"** whites who know goodness well that without the applicable laws in place African-Americans and/or people of color would not have some of the jobs they have today. While ***"concentrated"*** to government jobs in which African-Americans are employed, these may only be for monitoring/regulating purposes and given to certain African-Americans while their stringent "screening" process is used to deprive certain African-Americans job opportunities as well. *Clearly, the United States has a long way to go*.

*As with Carl Brandon, **"certain"** whites use the system to incarcerate the African-American male, providing him with a criminal record thus precluding him from finding gainful employment upon release – all a part of a system to continue to oppress the African-American race and/or the person one may expect to be the head of the household/family. Research will show how funding is being requested to build more prisons/cages in preparation of future incarceration of our African-American males. It appears the present focus is on the African-American youth (as in the Jena 6 situation).*

V. JUDGE WILLIAM L. SKINNER, II

This is a ***White*** judge presently serving in the Hinds County Court in Jackson, Mississippi. He is the son of the deceased Officer William Skinner – who was shot and killed during the 1971 FBI raid on the RNA (EMPHASIS ADDED). Prior to this position, Judge Skinner was a judge in the Hinds County Justice Court where I first had an opportunity to meet him under unpleasant circumstances and as a direct and proximate result of violations to rights secured/guaranteed under the United States Constitution, Civil Rights Act, Landlord & Tenant Act and other statutes/laws; in which my landlord was attempting to unlawfully and illegally obtain my property. The record evidence contained herein will support that Judge Skinner uses his judgeship to abuse the laws and knowingly commit civil and criminal wrongs against African-Americans; moreover, uses his position in an unlawful/illegal and unethical manner to ***shield/mask*** his retaliation and ***vengeance-seeking practices*** **to *vindicate* his father's death** – in which I have been subjected to. I have had the opportunity to experience first-hand Judge Skinner's ***hatred, racism and discriminatory*** application of the laws to African-Americans **(especially if they are educated)**. *THIS IS A JUDGE NOT FIT TO PRESIDE IN THE JUDICIAL SYSTEM AND **IS TO BE REMOVED IMMEDIATELY** THROUGH THE APPROPRIATE LEGAL PROCESS.*

Such outrage is evidenced in an article (as there were many surrounding this incident) where he makes statements such as, "*This man is a terrorist*" and *"He ran a terrorist organization, and there is no difference between him an Osama bin Laden,*" as he refers to Imari Obadele who was invited to speak at an event honoring Black History Month. Judge Skinner going to on to say, "I'm mad as hell, and I'm not going to take this crap" as according to reporter. (See **EXHIBIT "17"** attached hereto). Neither was Obadele present at the shootout/raid, according to reports, when Officer Skinner was shot. Such needless outrage by Judge Skinner apparently against a man (Obadele) who was not present at the shootout that eventually led to the death of his father.

In an article, a statement was made by a person by the name of Chokwe Lumumba which reads, "***white*** supremacy is still alive in law enforcement *as it was in the 1970's*. Referring to the Hinds County **Sheriff Malcolm McMillin's** (one of the key defendants in a lawsuit I have filed in the USDC-MS and one in which said records will support the **voluminous** lawsuits (See **EXHIBIT "18"** attached hereto and incorporated by reference) filed by other citizens against him) stance against Obadele's visit, he said *white* supremacy is alive today, but different." From the article, one may see just how **prevalent** the *racial* divide and *racial injustices* are, and the **bitterness** that flows from such behavior.

However, my personal experience and the evidence contained herein will only support and/or echo such ***truthful*** statements. Whether, such "**white** *supremacy*" is "different," **BASED ON MY PERSONAL EXPERIENCE, I WOULD SAY NOT.** To me it is all the same, **alive and widely encouraged by the Klu Klux Klan and the likes of such groups masquerading themselves in positions such as judges, lawyers and others wherein they have strategically sought employment in positions where they can manipulate the judicial/legal process as well as further the agenda of the KKK and/or other racist organizations created to destroy the lives of African-Americans and/or people of color,** merely done to further *oppress* me and other African-Americans and/or people of color. Such groups' reliance on their network connections and relationships with people in key prominent positions (such as judges) to fulfill their end of the agreement reached between them. Not only that, the evidence contained with this correspondence will clearly support *Judge Skinner's arrogance and other **certain** whites' abuse of the laws and the judicial and/or governmental process to obtain unlawful/illegal and undue advantage over African-Americans such as myself. Moreover, how they place themselves above the law and believe they cannot be reached and/or the laws do not apply to them.* How **certain** whites rely upon their ***special*** *relationships/alliances* to judges such as Judge Skinner and others to inflict, oppress and destroy the lives of African-Americans (as they did with me). From my observation of Judge Skinner (and this is before I knew what had happened to his father) I discerned from Judge Skinner's demeanor in court and countenance he was *racist*, *prejudice*, etc. and he is using his position to subject African-Americans to unjust/unlawful rulings to ***aid*** *whites* and/or *members of his race*. No from my experience with Judge Skinner his prejudice was so obvious and radiated from the bench. After my incident and obtaining additional information regarding Judge Skinner, it was clear that he was using his father's murder to exact revenge on African-Americans. Not being able to let go and move on after his father's death and not being happy people had served time in prison (for a crime they probably did not commit and may have been defending their property against an unlawful/illegal raid by the FBI – a right secured under the Constitution).

No, that was not enough as displayed by his remark(s), *"I'm mad as hell, and I'm not going to take this crap."* This is a judge who has run amuck and is clearly out of control. Approximately 33 years later (from his father's death) when this story was taken, and he still harbors such animosity. Clearly Judge Skinner has not healed, and neither has he let go to move on with his life. His disappointment in failing in such efforts to keep Obadele from speaking is clear. ***Apparently his father did not instill in him the importance of forgiveness and letting the laws handle such wrongs – instead he learned to harbor resentment, hatred and anger towards African-Americans and wanted a job in which he could take out his frustrations and revenge.***

While I am not aware of any evidence to support the conviction of Obadele, what is clear, Obadele served his time on what appears to be charges of conspiracy so Judge Skinner needs to move on. Instead he continues to rely on special favors from his relationships with the FBI and make ***public outburst of rage*** *as displayed in articles.*

Judge Skinner is one of the defendants I have filed a lawsuit against in the USDC-MS. Judge Skinner authorized the unlawful/illegal removal/eviction and taking of my residence and property. Judge Skinner doing so with ***knowledge*** that he had **no** jurisdiction of the matter brought before him. Therefore, as a matter of statutes/laws, Judge Skinner is not immuned from lawsuits. The evidence in this correspondence will support Skinner's knowledge of landlord/tenant laws, so he knew and/or should have known that he was committing civil/criminal wrongs against me. Nevertheless, he proceeded with total disregard to my protected rights (as **certain** Whites do in ***scoff*** thereof). Furthermore a NEXUS can be established between Judge Skinner relationship with the FBI and others. **Information to sustain the *conflict of interest* of the FBI and its agents and the agency's blatant refusal to uphold the laws and its allowances of Judge Skinner's and others criminal behavior against African-Americans, such as myself**: No clearly the FBI is not going to do anything and attempt to force me to bring legal actions through the judicial process rather than them prosecuting in that they are aware that due to the conspiracy leveled against me and participation on their part in furtherance of said conspiracy that they want it to appear that I am suffering from the "boy who cried wolf" syndrome. Attempting to play games and make it seem that I do not have valid claims and/or actions which fall under their jurisdiction as evidenced in their correspondence to me – wherein they are refusing to perform the ministerial duties owed me and force me through waste my time in the judicial process; wherein they are fully aware the *deck has been stacked.* See **EXHIBIT "19"** attached hereto and incorporated by reference.

SOME OF PROFESSIONAL ORGANIZATIONS JUDGE SKINNER IS ASSOCIATED WITH:

Mississippi Justice Court Judges Association – **President** (2005-2006 and 2006-2007)

The National Judges Association

Mississippi Center for Police and Sheriffs – **President** and **Chairman**

POST GRADUATE EDUCATION:

Landlord/Tenant – 2006 Lorman Education Services

Landlord/Tenant – 2005 Lorman Education Services

Evictions and **Landlord/Tenant** Law in Mississippi – May 2003 National Business Institute

Landlord/Tenant Update Seminar – 2001 Continuing Education

SPECIAL SCHOOLS:

SWAT Training - **FBI**

Crisis Management - **FBI**

FBI Defensive Tactic Instructor Certification

Semi-Automatic Weapon – FBI/JPTA

Pistol Transition for Instructors - **FBI**

AWARDS:

Former Board of Directors State SWAT Association

See **EXHIBIT "20"** – Resume attached hereto and incorporated by reference.

A. JUDGE SKINNER FATHER'S INFO:

Shot during the 1971 FBI unannounced raid on the RNA (Republic of New Africa): Note – **Only** *fatally* of this raid (?). While I have not viewed the record, I am left with doubts and/or wondering whether or not Officer Skinner was shot by friendly fire (from another police officer or an FBI agent) and the FBI covered up such information. Moreover, Officer Skinner's son, Judge Skinner's, ***using his father's death as a ransom over the head of the FBI and relying upon the FBI's guilt for Officer Skinner's death to obtain special favors from the FBI***. Surely the record will support that the FBI is required to handle investigations into the civil/criminal wrongs rendered me; however, they failed to do so. So the question would need to be answered through an Investigation and Hearings why the FBI has taken such a far departure from the laws and has elected to deprive me equal protection of the laws and/or due process of laws in the handling of the complaint I filed with its agency. **THEREFORE, I seek the findings of all issues raised in the FBI Complaint I filed**.

The Jackson, Mississippi Police Academy is named after him (*William L. Skinner Training Academy*). See **EXHBIT "22"** attached hereto and incorporated by reference.

> Lieutenant William Skinner was shot and killed during a standoff with a group of militants who were barricaded in a house. Lieutenant Skinner was standing beneath a tree when he was struck in the head by a single round that had been fired from underneath the house.
>
> The ***Black Liberation Army***[6] was a violent, radical group that

[6]**It appears the RNA's name was changed to the "Black Liberation Army" (what was the correct name) – apparently a name used by the media to portray the RNA in a negative light.**

> attempted to fight for independence from the United States government in the late 1960's and early 1970's. The BLA was responsible for the murders of more than 10 police officers around the country. They were also responsible for violent attacks around the country that left many police officers wounded.

One may question, whether or not Officer Skinner was standing beneath a tree, or was he in his car? See **EXHBIT "21"** attached hereto and incorporated by reference. There are conflicting stories as to where he was when he was shot. Therefore, raising some serious and reasonable doubts surrounding the shooting of Officer Skinner.

B. THE ARREST:

In January 2006, there was a matter brought before Judge Skinner by my landlord. My landlord using unlawful/illegal tactics it has repeatedly relied upon to have African-Americans and/or people of color unlawfully/illegally removed from its property. In that I was told I had to be in court, I went. Judge Skinner attempted to get me to argue the merits of the landlord's case. I refused and advised I was there to confirm the improper service of process. During the process (upon reviewing the paperwork), Judge Skinner asked whether or not I was an attorney and I advised him no; and neither did I provide him with information that I worked for a law firm. I believed that justice should be applied to the laws whether one is an attorney or not. *I came away with the impression that if I were an attorney, Judge Skinner would not have acted in the unlawful/illegal and unethical manner in which he did.* When Judge Skinner insisted that I defend against the landlord's claims, I simply refused, **turned and walked out of his court**. I was not required to be there and I found the acts of Judge Skinner to be ***atrocious***. *Clearly Judge Skinner was making a **MOCKERY** of the judicial process – to his amusement.* In **retaliation** of my leaving his courtroom, Judge Skinner took it upon himself to date and sign a "REMOVAL" document as my attorney in which he was not. (See **EXHIBIT "23"** attached hereto and incorporated by reference).

The record evidence will support the felonious actions of **"certain"** Whites and others against me.

> **Felonious:** 2) Constituting or having the character of a felony. 3) Proceeding from an evil heart or purpose; malicious; villainous. 4) Wrongful; (of an act) done without excuse or color of right. – Black's Law Dictionary (Second Pocket Edition)

The record evidence will support that "felonious restraints" I was subjected to.

> **Felonious Restraint:** 1) The offense of knowingly and unlawfully restraining a person under circumstances that expose the person to serious bodily harm. Model Penal Code § 212.2(a). 2) The offense of holding a person in involuntary servitude. Model Penal Code § 212.2(b). – Black's Law Dictionary (Second Pocket Edition)

VI. CONSTABLE JON LEWIS

Constable Jon C. Lewis (and ***real good friend*** of Judge Skinner) ***is the "government" official*** who subjected me to an *unlawful/illegal* arrest and had me detained against my will while that went through my residence, destroyed evidence, stole property, etc. *During the February 14, 2006 incident*, ***I had my microcassette recorder on me recording what was going on***. Why the recording, because it has been projected that we (African-Americans) are expected not to be too bright and **prone to violence**. Moreover, the known abuse by public officials (police officers, etc.) during arrests. While I was outside the apartment (being requested to step out by the Lewis), Lewis appeared to be upset because I would not leave. I advised *I had the right to be there and they were in violation of said rights*. So that they could continue their unlawful/illegal acts (destroy evidence to cover-up their illegal wrongs and theft of my property, etc.), Lewis placed me under arrest. He searched my pockets and found the tape recorder and removed it. ***He did not turn it in at the Hinds County Detention Center where I was taken, and neither did he return the property to me.*** While I requested that Lewis return my property, he failed to do so. Taking my property and destroying the evidence contained thereon. See **EXHIBIT "24"** March 17, 2006 Request for Arrest Report & Return of Personal Property Retrieved by Constable Jon C. Lewis. . ."

A. OTHER CORRUPT INFORMATION THAT SURFACED ON CONSTABLE LEWIS:

The record evidence will support that Lewis, Crews, representatives Dial Equities, Inc., representatives of Spring Lake Apartments and others resorted and/or relied upon the carrying out of criminal acts in which they: 1) invaded the my privacy; 2) unlawfully seized, stole and/or allowed to be stolen my property or damage of property; 3) destruction of evidence in that they were notified by the me that would be used in legal actions against them, 4) personal injury/harm to me, etc.. *Lewis has **welcomed** an investigation into his practices*. **Therefore, I hope that Lewis is just as *zealous*, *forthcoming* and *willing* to aid the Legislature/Congress in the Investigation I bring before this body**. Moreover, that he is willing to accept whatever punishment as a direct and proximate result for his unlawful/illegal and unethical practices (if found). As the record will reflect that Constable Lewis conducts business in his official capacity that appears to be criminal in nature and *clearly affects the **public at large***:

> WLBT Channel 3 TOP STORY – 04/19/06 – **Supervisors Looking Into Constable's Methods**:
>
> The Hinds County Board of Supervisor's is looking into the methods used by the county's constable. At issue, is how he collects his fees. The constable says he has done nothing wrong.
>
> In a letter to the county administrator, Justice Court Clerk Patricia Woods accused Constable John Lewis of using questionable tactics.

"There is absolutely nothing criminal here, nothing wrong," said Constable Jon Lewis.

The clerk said Friday, April 7th, several defendants appeared at justice court to pay fines, but a judge wasn't present. A **Utica** man received a letter telling him to appear, but the man had already paid his speeding ticket in January.

After learning that, the clerk told her staff not to collect any fees from defendants who did not have outstanding warrants.

"I refuse to be a part of his collection process," said Woods in her letter to County Administrator Anthony Brister. "*I cannot imagine how many letters were mailed or payments* ***received*** *at his* ***home*** *address*."

"I am *welcoming* an investigation from the auditor's office. I would like it to be looked into *very* thoroughly," said Lewis.

Constable Lewis says the letter to the defendant about the speeding ticket was a mistake on his part,[7] but he makes not apologies for using tough methods.

See **EXHIBIT "25"** attached hereto and incorporated by reference. THROUGH THIS SUBMITTAL TO THE LEGISLATURE/CONGRESS, I REQUEST THAT Lewis' request to be investigated be granted and ***thorough investigation(s) be initiated.*** Moreover, the evidence will show that I filed a formal written complaint with the Hinds County Board of Supervisors on or about August 11, 2006 (See **EXHIBIT "26"** attached hereto and incorporated by reference) as well as placed the County on notice of my intent to sue. However, said Board elected to do nothing and to date I have not been provided with a ruling from the Board regarding my official complaint filed against Constable Lewis. Therefore, a reasonable mind may conclude that the Board knew and/or should have known of the unlawful actions of Constable Lewis and allowed him to continue to conduct business on their behalf with knowledge that he was performing said duties in a criminal and unlawful/illegal manner.

A reasonable mind may conclude from the facts, evidence and legal conclusions presented in the record, that perhaps Constable Lewis' eagerness for an investigation was due to the fact he thought the "ball would remain in desired **court(s),**" *ballpark* and/or with the Board of Supervisors – **who would all seek to protect him and render him *special* favors as they endorsed his corrupt practices**. *For to expose him would expose them also*; I believe it would be hard for Constable Lewis to be willing to take the fall alone for the criminal acts of his co-

[7] Only because he has probably been practicing in such unlawful/illegal ways for so long and never expected to be exposed or that they would find out that he was having payments coming directly to him at home – were these payments reported? Hopefully, an investigation by the Legislature/Congress will yield this information. **Providing Constable Lewis with the *investigation* he is requesting.**

conspirators after perhaps obtaining assurance from them that he would be alright – to *"stick with them."* However, to Constable Lewis' and others disappointment, **I am requesting that the Legislature/Congress initiate an Investigations and hold Hearings** regarding this instant Complaint.

The record evidence will support that Constable Lewis unlawfully/illegally removed personal property from my person during his unlawful arrest of me and destroyed and/or tampered with said evidence in that he knew that I would use it in a lawsuit against him. Although I requested the return of my property – See **EXHIBIT "24"** attached hereto and incorporated by reference. To date, Constable Lewis has failed to return my property; moreover, his attorneys have engaged and/or endorsed such criminal acts. *Moreover, **the FBI is aware of such unlawful/illegal and unethical practices** of Constable Lewis and **also failed** to do anything to correct such injustices.*

CUT & PASTED: http://www.michie.com/mississippi/lpext.dll?f=templates&fn=main-h.htm&cp=mscode

§ 97-9-125. Tampering with physical evidence.

(1) A person commits the crime of tampering with physical evidence if, believing that an official proceeding is pending or may be instituted, and acting without legal right or authority, he:

(a) Intentionally destroys, mutilates, conceals, removes or alters physical evidence with intent to impair its use, verity or availability in the pending or prospective official proceeding;

(b) Knowingly makes, presents or offers any false physical evidence with intent that it be introduced in the pending or prospective official proceeding; or

(c) Intentionally prevents the production of physical evidence by an act of force, intimidation or deception against any person.

(2) Tampering with physical evidence is a **Class 2 felony**.

Sources: Laws, 2006, ch. 387, § 13, eff from and after July 1, 2006.

§ 97-9-129. Sentencing

(1) A person who has been convicted of any Class 1 felony under this article shall be sentenced to imprisonment for a term of not more than five (5) years or fined not more than Five Thousand Dollars ($5,000.00), or both.

(2) A person who has been convicted of any Class 2 felony under this article shall be sentenced to imprisonment for a term of not more than two (2) years or fined not more than Three Thousand Dollars ($3,000.00), ***or both****.*

(3) A person who has been convicted of any misdemeanor under this article shall be sentenced to confinement in the county jail for a term of not more than one (1) year or fined not more than One Thousand Dollars ($1,000.00), or both.

Sources: Laws, 2006, ch. 387, § 15, eff from and after July 1, 2006.

See **EXHIBIT "27"** attached hereto and incorporated by reference. Furthermore, the record evidence will support that instead of filing an answer to the lawsuit filed by me in the USDC-MS against Constable Lewis; he elected to bring malicious charges against me and waived any such defense and/or failed to defend against the claims filed in the lawsuit brought by me in the court. NOW HE AND HIS ATTORNEYS ARE RELYING UPON **"SPECIAL"** FAVORS FROM THE JUDGES/MAGISTRATE TO AID THEM IN THE FURTHERANCE OF THE CONSPIRACY LEVELED AGAINST ME AND TO DEPRIVE ME **"EQUAL"** PROTECTION OF THE LAWS AND **"DUE PROCESS"** OF LAWS – ***ATTEMPTING TO HAVE THE LAWSUIT FILED AGAINST HIM UNLAWFULLY/ILLEGALLY DISMISSED!***

In the taking of my microcassette (and who knows what else Constable Lewis helped himself to of my property when he returned and/or upon leaving me at the Hinds County Detention Center), Lewis failed to turn in such evidence at the Hinds County Detention Center at the time of my admission. Instead, Constable Lewis knowingly, deliberately and with forethought kept the microcassette in that ***I advised him that I would be bringing legal action against him and the others***. Therefore, *Constable Lewis intentionally, deliberately concealed, removed and/or destroyed evidence with the intent to impair and/or prohibit its use in the lawsuit he was advised would be brought against him.*

I believe the record evidence will support the civil/criminal wrongs of Constable Lewis, Crews, representatives of Spring Lake Apartments, representatives of Dial Equities Inc. and others in the unlawful/illegal posting of notices and/or **tampering** with said notices for purposes of depriving me equal protection of the laws, due process of laws, and efforts to obtain an undue and/or unlawful advantage over me. Moreover, *that the actions by said persons being done to threaten, incite fear and intimidation in me to force me to give up my residence*. When I refused to do so and legally took a stand on my protected rights, said persons proceeded to have my residence and property unlawfully seized and participated in the unlawful act arising out of such practices.

MISSISSIPPI CODE OF 1972

SEC. 97-3-85. Threats and intimidation; by letter or notice.

If any person shall post, mail, deliver, or drop a threatening letter or notice to another, whether such other be named or indicated

therein or not, with intent to terrorize or to intimidate such other, he shall, upon conviction, be punished by imprisonment in the county jail not more than six months, or by fine not more than five hundred dollars, or both.

SOURCES: Codes, 1892, Sec. 1303; 1906, Sec. 1377; Hemingway's 1917, Sec. 1117; 1930, Sec. 1147; 1942, Sec. 2384.

CUT & PASTED FROM: http://www.mscode.com/free/statutes/97/003/0085.htm. See **EXHIBIT "28"** attached hereto and incorporated by reference.

I believe that the record evidence will support a pattern-of-practice by the **"certain"** Whites and others. Moreover, their use of government entities/resources and said entities' authority to commit civil/criminal wrongs against me. Moreover, that such pattern-of-practice, resulted in my being subjected to excessive force, discriminatory harassment, false arrest, unlawful seizure of property and residence, unlawful arrest, forced out of my residence and having to move away, etc.

Title 42, U.S.C., Section 14141
Pattern and Practice

This civil statute was a provision within the Crime Control Act of 1994 and makes it unlawful for any governmental authority, or agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers or by officials or employees of any governmental agency with responsibility for the administration . . . justice or the incarceration . . . that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

Whenever the Attorney General has reasonable cause to believe that a violation has occurred, the Attorney General, for or in the name of the United States, may in a civil action obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.

Types of misconduct covered include, among other things:

1. Excessive Force
2. Discriminatory Harassment
3. False Arrest
4. Coercive Sexual Conduct
5. Unlawful Stops, Searches, or Arrests

CUT & PASTED FROM: http://www.**fbi**.gov/hq/cid/civilrights/statutes.htm. See **EXHIBIT "13"** It is important to note, that said information is already in the record of this Court.

I believe that the record will support that government officials (Judges/Magistrates, government officials, agents, constable, etc.) acting under color of law, statute, ordinance, regulations, did willingly, knowingly, deliberately with malicious intent deprive or cause me to be deprived of rights, privileges, etc. secured or protected by the Constitution, Civil Rights Act and other statutes/laws of the United States.

Title 18, U.S.C., Section 242
Deprivation of Rights Under Color of Law

This statute makes it *a **crime*** for **any person acting under color of law, statute, ordinance, regulation,** or custom to ***willfully*** *deprive* or ***cause to be deprived*** *f*rom any person those rights, privileges, or immunities secured or protected by the Constitution and laws of the U.S.

This law *further **prohibits** a person **acting under color of law, statute, ordinance, regulation or custom** to willfully subject or cause to be subjected any person to **different** punishments, pains, or penalties, than those prescribed for punishment of citizens on account of such person being an alien or **by reason of his/her color or race**.*

Acts under "color of any law" include acts not only done by federal, state, or local officials within the bounds or limits of their lawful authority, but also acts done without and beyond the bounds of their lawful authority; provided that, *in order for unlawful acts of any official to be done under "color of any law,"* the unlawful acts **must be done** *while such official **is purporting** or **pretending to act** in the performance of his/her **official** duties*. This definition includes, in addition to law enforcement officials, individuals such as Mayors, Council persons, **Judges**, Nursing Home Proprietors, Security Guards, etc., persons who are bound by laws, statutes ordinances, or customs.

Punishment varies from a fine or imprisonment of up to one year, or both, **and if bodily injury results** or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire shall be fined or imprisoned **up to ten years or both**, and if death results, or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

CUT & PASTED: http://www.**fbi**.gov/hq/cid/civilrights/statutes.htm. See **EXHIBIT "13"** attached hereto and incorporated by reference.

I seek the intervention of the Legislature/Congress and request Investigations and Hearings to address the ongoing conspiracy and to enact and direct the enforcement of the laws which deter such unlawful/illegal actions rendered me by the **"certain"** Whites, their counsel, government entities (their officials/employees) and others. Conspiracy actions orchestrated and/or initiated by *certain* "Whites" against me for purposes of injuring, oppression, threats and intimidation to prevent me from exercising ***protected*** *rights secured under the Constitution as well as other statutes/laws.*

Title 18, U.S.C., Section 241
Conspiracy Against Rights

> This statute **makes it *unlawful*** for two or more persons to *conspire to injure, oppress, threaten, or intimidate any person of any state, territory or district in the free exercise or enjoyment of any right or privilege secured* to him/her by the Constitution or the laws of the United States, (**or because of his/her having exercised the same**).
>
> It further makes it unlawful for two or more persons to go in disguise on the highway or on the premises of another with the intent to prevent or hinder his/her free exercise or enjoyment of any rights so secured.
>
> Punishment varies from a fine or imprisonment of **up to ten years**, or both; and if death results, or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title or imprisoned for any term of years, or for life, or may be sentenced to death.

CUT & PASTED FROM: http://www.**fbi**.gov/hq/cid/civilrights/statutes.htm. See **EXHIBIT "13"** attached hereto and incorporated by reference.

I further seek the Legislature/Congress' intervention and request Investigations, Hearings and render findings in that I believe the record will support the felonious acts that **"certain"** Whites and others have taken against me; in which I will seek indictments against those found guilty (if any) of such criminal/civil wrongs alleged against me.

MISSISSIPPI CODE OF 1972

SEC. 97-1-3. Accessories before the fact.

> Every person who shall be an accessory to any felony, before the fact, shall be deemed and considered a principal, and shall be

indicted and punished as such; and this whether the principal have been previously convicted or not.

SOURCES: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 8 (6); 1857, ch. 64, art. 2; 1871, Sec. 2484; 1880, Sec. 2698; 1892, Sec. 950; 1906, Sec. 1026; Hemingway's 1917, Sec. 751; 1930, Sec. 769; 1942, Sec. 1995.

CUT & PASTED FROM: http://www.mscode.com/free/statutes/97/001/0003.htm. See **EXHIBIT "29"** attached hereto and incorporated by reference as if set forth in full herein.

VII. HINDS COUNTY

I believe Investigations will yield information as to the role Hinds County Officials played in the conspiracy and their knowledge of the civil/criminal acts of Hinds County employees (such as Judge Skinner, Constable Lewis and others); however, elected to do nothing because of its knowledge of my participation in protected activities. Thinking that such knowledge of my participation in protected activities, licensed them to commit civil/criminal wrongs against me and assuming that should legal action be brought against it, it would attempt to build a defense around its knowledge of my participation in other protected activities.

On or about August 11, 2006, I submitted an Official Complaint against Constable Jon C. Lewis. To date, I have heard nothing of this Complaint.

On or about August 11, 2006, I also notified Hinds County of my "*Intent to File Lawsuit.*"
See **EXHIBIT "26"** attached hereto and incorporated by reference.

On or about July 11, 2007 (deadline to file Answer to complaint), rather than file an Answer to my civil lawsuit filed against him, Constable Lewis filed (on July 16, 2007) an **untimely** "*Motion to Dismiss/Motion to Quash*" – which was met by a **timely** Motion to Strike . . . by me. Constable Lewis instead of filing a timely Answer to the complaint I filed in USDC-MS, moved in the Hinds County Justice Court (where his friend Judge Skinner worked) to bring malicious charges against me alleging "*Resisting Arrest*" and "*Disorderly Conduct Failure to Comple (sic) With Law Enforcement.*" See **EXHIBIT "30"** attached hereto and incorporated by reference. These charges were dismissed. See **EXHIBIT "31"** attached hereto and incorporated by reference. The malicious charges brought against me by Constable Lewis was unlawful/illegal and merely brought as a dilatory tactic to provide a defense to the civil lawsuit I had filed against him in the USDC-MS – Case No. 3:07-cv-00099. Constable Lewis brought such malicious charges against me well over a year (approximately 16 months later – after his arrest of me). **Constable Lewis was aware as early as February 14, 2006, that he would be sued.** I believe a reasonable mind may conclude that based upon the evidence, one may conclude that the actions by Constable Lewis in the filing of said malicious charges against me, were done under the advisement of his counsel of the law firm of Page Kruger & Holland (my

former employer who terminated my employment upon learning of my engagement in protected activities – filing of lawsuit(s))

VIII. CONSPIRACY

I believe the record evidence will support the conspiracy acts of **"certain"** Whites and others against me. Therefore, I seek the intervention of the Legislature/Congress to enact and/or direct said laws that prohibit such acts and render the appropriate punishment permissible by statutes/laws.

MISSISSIPPI CODE OF 1972

SEC. 97-1-1. Conspiracy.

If two (2) or more persons conspire either:

(a) ***To commit a crime***; or

(b) **Falsely and maliciously** to indict another for a crime, or to ***procure*** to be complained of or ***arrested*** for a crime; or

(c) *Falsely to institute or maintain an action or suit of any kind*; or

(d) To **cheat** and **defraud** ***another out of property*** *by any means which are in themselves criminal,* or which, **if** *executed,* would amount to a cheat, or to **obtain** *money* or any other *property* or *thing* by **false** *pretense*; or

(e) To prevent another from exercising a lawful trade or calling, or doing any other lawful act, by force, threats, intimidation, or by interfering or threatening to interfere with tools, implements, or property belonging to or used by another, or with the use of employment thereof; or

(f) To commit any act injurious to the public health, to public morals, trade or commerce, or for the perversion or obstruction of justice, or of the due administration of the laws; or

(g) To overthrow or violate the laws of this state through force, violence, threats, intimidation, or otherwise; or

(h) ***To accomplish any unlawful purpose***, or a lawful purpose by any unlawful means; such persons, and each of them, **shall be guilty of a felony** and upon conviction may be punished by a fine of not more than five thousand dollars ($5,000.00) or by imprisonment for **not more than five (5) years**, or by both.

> Provided, that where the crime conspired to be committed is capital murder or murder as defined by law or is a violation of section 41-29-139 (b)(1) or section 41-29-139 (c)(2)(D), Mississippi Code of 1972, being provisions of the Uniform Controlled Substances Law, the offense shall be punishable by a fine of not more than five hundred thousand dollars ($500,000.00) or by imprisonment for not more than twenty (20) years, or by both.
>
> Provided, that where the crime conspired to be committed is a misdemeanor, then upon conviction said crime shall be punished as a misdemeanor as provided by law.
>
> **SOURCES:** Codes, 1892, Sec. 1006; 1906, Sec. 1084; Hemingway's 1917, Sec. 810; 1930, Sec. 830; 1942, Sec. 2056; Laws, 1954, Ex. ch. 20; 1968, ch. 343, Sec. 1; 1981, ch. 488, Sec. 1, eff from and after passage (approved April 15, 1981.)

CUT & PASTED FROM: http://www.mscode.com/free/statutes/97/001/0001.htm. See **EXHIBIT "32"** attached hereto and incorporated by reference.

I believe Investigations by the Legislature/Congress will yield the following in regards to legal actions I have brought in which persons conspired to: **a)** commit a crime, or **b)** falsely and maliciously accuse me of a crime and subjected me to an unlawful/illegal arrest; **c)** falsely and maliciously repeatedly instituted lawsuits against me – ongoing behavior in which they are now attempting to bring **another** malicious action against for an alleged traffic violation approximately three (3) years ago and threatening me with a **"warrant for my arrest."** See **EXHIBIT "33"** attached hereto and incorporated by reference. An action in which they failed to prosecute. Moreover, an action wherein at the time of the alleged charges the City Prosecutor, Barbara Blunston, was an attorney I worked with during a contract assignment with the Mississippi Division of Medicaid and a person upset when I turned down the job opportunity offered me – after conflict with salary offer. This is merely evidence of continued acts to destroy my life, harass me, subject me to an unlawful arrest; **d)** cheat and defraud me out of my residence through the use of criminal acts and being executed under false pretense to unlawfully/illegally obtain property to destroy evidence, etc. known to them to be brought in lawsuit against them; **e)** commit willful and deliberate acts to obstruct the administration of justice; **f)** to overthrow or violate the laws of the United States as well as the state in which I resided; **g)** willfully, deliberately and maliciously accomplish unlawful/illegal purposes against me.

> For the Legislature/Congress to obtain the facts, evidence and legal basis of the civil/criminal wrongs rendered me, attached at **EXHIBIT "34"** is the civil complaint I filed in Case No. 3:07-cv-00099 of the USDC-MS.

For such actions taken against me by "certain" Whites was knowingly, deliberately and maliciously done through purposes of "force or threat of force willfully injuring, intimidation or interferences" to me because I am African-American and have sought to seek justice through

protected activities in the exercise of my rights against such unlawful/illegal violations rendered me. Moreover, actions taken against me by "certain" Whites to further their agenda against African-Americans and/or persons of color. See 42 U.S.C. § 3631- **EXHIBIT "35"** attached hereto and incorporated by reference.

IX. FEDERAL BUREAU OF INVESTIGATION (FBI)

On or about **June 26, 2006**, I filed a "formal" typewritten Complaint in person with the FBI in Jackson, Mississippi. See **EXHIBIT "16"** attached herto and incorporated by reference. On August 5, 2006, I followed up requesting the status of the Complaint and noted certain concerns such as:

> *My concerns, as conveyed in the Complaint, was whether or not the FBI would be willing to investigate the allegations of my Complaint and remain impartial in their handling thereof, due to the fact that Judge Skinner* (Justice Court Judge) – **whose father was killed in the line of duty during an FBI raid in 1971 on the Republic of New Afrika** – the/his Constable (Jon Lewis) and others, associated with Judge Skinner, may have ***engaged in criminal wrongs*** against me which *violated my civil rights* and *other protected rights*.
>
> Upon my recent visit to the FBI's website, I found where the FBI handles Complaints such as mine, which I believe falls under **CIVIL RIGHTS – COLOR OF LAW:** (1) Excessive force, (2) False Arrest and Fabrication of Evidence, and (3) Failure to Keep from Harm.

See **EXHIBIT "36"** attached hereto and incorporated by reference.

The Legislature/Congress' intervention is sought to Investigate the FBI's handling of the complaint I filed in that the evidence supports the claims brought by me were within the jurisdiction of the FBI; however, they failed to perform the ministerial duties owed me. Furthermore, it raises reasonable doubts as to such failure by the FBI may be in furtherance of the conspiracy leveled against me and acts taken to render Judge Skinner and others **"special"** favors. I believe Investigations will yield evidence that the FBI in failing to deter the legal/civil/criminal wrongs brought to its attention, deprived me of rights secured under the Constitution, Civil Rights Act, the statutes/laws upon which they were created and/or are required to uphold. Furthermore, I believe the Legislature/Congress will find that there was never an investigation or inquiry by the FBI as to the claims asserted in the complaint I filed with it, in that said agency compromised its integrity for purposes of rendering of **"special"** favors for Judge Skinner and others as well as actions deliberately done to force me to file legal actions

against Judge Skinner and others in that they would conspire to make infringe upon depriving me of civil rights, constitutional rights, and other statutes/laws in which I am entitled.

The record evidence will support that a timely Complaint was filed with the FBI notifying of the civil/criminal wrongs rendered me; however, the FBI elected to do nothing and to date has done nothing although they are aware of the conspiracy against me – raising very valid concerns that the FBI is playing such a role in the conspiracy leveled against me.

My concerns regarding the FBI's handling of this matter is the fact that, such failure may be due to its relationships and ties to Judge William Skinner as well as the Judges, attorneys and other friends of the FBI officials. It is important to note that Judge Skinner's father has a police academy in Jackson, Mississippi named after him – *William L. Skinner Training Academy*. Given the facts one may conclude the FBI's failure to prosecute may be a direct and proximate result of the role it played in Judge Skinner's father's death (then blaming it on the RNA) during the 1971 raid on the New Republic of Africa. Moreover, has for all these years covered up such facts for the purposes of destroying African-American lives and subjecting them to prison.

Judge Skinner's background does not only link him to an association and or alliance with the FBI through is father's death, but his SWAT Training FBI, Crisis Management FBI, FBI Defensive Tactics Instructor Certification, Semi-Automatic Weapon FBI/JPTA and Pistol Transition of Instructors FBI. See **EXHIBIT "37"** attached hereto. While he asserts Obadele to be a terrorist, articles and pictures supports his obsession with guns – moreover a medical discharge from the police department – raising serious concerns as to his medical state (what drugs – if any- he is taking) and whether he is even fit to preside as a Judge in that such a position requires decisions that affects the lives of citizens and/or the public at large. *When was the last time he was required to submit to a **"drug"** test*?

X. BARIA FYKE HAWKINS & STRACENER (BFH&S)

This is a law firm I began working for in late 2002. It is a law firm I was employed with while I was involved in a lawsuit against Entergy (USDC-Eastern District of LA, New Orleans; Case No. 2:99-cv-03109) See **EXHIBIT "38"** – Docket Sheet attached hereto and incorporated by reference. **As a matter of law**, this case is **still** pending (while the Docket may show it as closed) because no final judgment (although I have **repeatedly** requested entry of "final" judgment) has ever been entered in this case. Clearly, further evidence of the courts' blatant disregard for my rights and refusal to enter the required judgments in compliance with the statutes/laws in which they are governed. Therefore, this is a matter that I also bring before the Legislature/Congress during its handling of this instant Complaint submitted it. Through this instant Complaint, I am also requesting that the Legislature/Congress through its Investigations determine whether Entergy, its counsel and/or others have been participating the in the conspiracy leveled against me.

Shortly after one of the partners' (David Baria) BFH&S trip to New Orleans, my employment with BFH& S was terminated. The following e-mail evidences my employment:

06/27/03 E-Mail:

VN: David, In that I am presently working and due to the circumstances involving my employment with BFH&S, I would like to have a friend of mine pick up my paycheck on Monday. Also, would like to know whether or not I will be getting my vacation pay as well. If so, please have these checks ready for my friend when she comes by. If there is a problem with this request, kindly advise.

See **EXHIBIT "39"** June 27, 2003 E-mail between myself and Baria; attached hereto and incorporated by reference.

While employed at BFH&S, I worked with David Baria (*Former **President** of the Mississippi Trial Lawyers Association*). Prior to a trip to New Orleans, Louisiana for a conference, I realized that Mr. Baria's behavior and/or attitude towards me had changed. After his return from New Orleans it was more noticeable and his demeanor very agitated, hostile, etc. I felt that prior to and during his trip to New Orleans that he probably had met with attorneys representing Entergy in a lawsuit I had filed. Baria abruptly terminated my employment with BFH&S telling me that I did not seem to be happy there, so he was letting me go to do something else. Such a statement which I knew was false and never did I advise him I was not happy there. I gathered that my termination from BFH&S was a mutual agreement (in the conspiracy that had been hatched against me to ruin my life and blacklist me) in that after the malicious deeds of Baria, he and the other owners left to go to lunch. My termination was prior to lunch. After notifying me of my termination, he left with them for lunch. **I must note, that while there, I was commended for the good job I was doing.** *In fact, the employment agency, which assigned me there, advised me of the positive feedback they had received in regards to my job performance and how the firm wanted to extend to me a job. A job in which I accepted.* While I believed that my abrupt termination with BFH&S was due to the fact that I was suing Entergy and was done as a favor for Entergy's attorneys, I had no proof so I merely moved on. However, I believe that based upon the evidence presented herein as well as that obtained through Investigations by the Legislature/Congress, it will yield additional evidence to sustain the allegations asserted by me.

A. BRUNINI GRANTHAM GROWER & HEWES:

After leaving BFH&S an employment agency assigned me to the law firm of Brunini Grantham Grower & Hewes (BGG&H). The people there seemed so nice. Only being there for a few days, the person I was assigned to work with Charles L. McBride ("Chuck") was pleased with my work. I was approached by the Human Resource person and asked if I was interested in the job and that BGG&H was interested in hiring me. I advised that I was interested and accepted. I then had a conversation with Chuck which during that conversation he had mentioned to me the need to run everything (correspondence, etc.) by him before going out because he was aware of a situation where a secretary had inadvertently mailed out legal documents to the opposing side in error. Had he been the attorney on the other side, he would not have opened the document and would have destroyed realizing that it was information that he

should not have received. I advised Chuck I understood. I had first-hand of the situation Chuck was referring to from the additional information he provided. Upon leaving his office and thinking on our conversation, I returned to advise Chuck that I had first-hand knowledge of the situation he brought to my attention because I was the secretary for the other law firm (which was BFH&S) who had received this information and left it at that. Chuck advised me that he would have to check into this; however, it should be okay. However, it was to the contrary. ***Apparently, upon checking with BFH&S – David Baria – Baria was upset and objected to their hiring me***. As a ***direct and proximate result*** of Baria's behavior and his **threats to bring legal action** against BGG&H if they hired me, it resulted in BGG&H's ***offer of employment being rescinded***. When I discussed this matter with an attorney I had worked with at another firm, I was advised that BGG&H could have taken actions in that lawyers are known to do this all the time. That if there were concerns, all they needed to do was have me sign an agreement to confidentiality - not only that, Chuck and the case or files in relation to the case in question were not even in the department of BGG&H that I would be working for. Nevertheless, this is what happened.

It is important to note that while BGG&H also contacted a former employer of mine (Owens Law Firm – African-American owned) to see if there would be a problem with my working for them. Owens Law Firm had no problem with my working with BGG&H. However, you can see how BFH&S (White owned law firm) began to create problems for me.

IT IS IMPORTANT TO NOTE: That there should be documentation in the records of BFH&S and BGG&H in that upon obtaining a receipt of Baria's correspondence relating to this matter and my assurance to Baria that I would abide by any confidentiality required. However, this was not acceptable. Apparently, Baria did not think that as his secretary I knew anything, so in his response to my correspondence he gave the go ahead in advising that I was under no such obligations of confidentiality. Therefore, I responded in kind (via correspondence) where I sung like a mockingbird and advised both Baria's firm and BGG&H what I knew and addressed the concerns of unethical practices of Baria's wife, Marcie Fyke, in that she was engaging in acts she knew were prohibited by Court Order. I was performing tasks for her not knowing that the Court had issued certain orders prohibiting certain acts. Fyke was providing information to the media, etc. when she knew that what she was doing was unethical, etc. As I mentioned BFH&S and BGG&H have the documentation surrounding this matter. I'm thinking that from her acts and the information provided to BGG&H, something happened, because for a period of time Fyke was not practicing law. (See **EXHIBIT "40"** attached hereto and incorporated by reference – thus an Investigation and Hearings as to the reasons for her inactivity is pertinent in this matter. Moreover, the reasons why she appears to be in *sole* practice now). I was thinking that BGG&H sought actions against Fyke for such unethical practices and violations. This probably being why BFH&S (Baria **Fyke** Hawkins & Stracener) ***dropped*** **her name from the firm** and it later became *"Baria Hawkins & Stracener."* See **EXHIBIT "41"** attached hereto and incorporated by reference. Since then, it appears Baria has left and the other two attorneys (Hawkins and Stracener) have picked up another partner to join the firm and the new name is "Hawkins Stracener & Gibson, PLLC." (See **EXHIBIT "42"** attached hereto) – *Now dropping both Baria and Fyke (David Baria's wife) from the name of the firm.* ***Perhaps wanting to be sure they get rid of any possible future liability to them.***

IT IS IMPORTANT TO NOTE: Prior to forming the law firm of BFH&S, Stracener (Eric) worked with a law firm by the name of **Page Kruger & Holland** (my former employer – employment which ended in May 2006). Baria and Stracener knew I was working at Page Kruger & Holland.

B. MARY ("MARCIE") MARVEL FYKE:

This being David Baria's wife and she worked at the law firm Baria Fyke Hawkins & Stracener. At the time of my discharge from Page Kruger & Holland, the Mississippi Bar had Marcie listed as "Inactive." While I am not sure for such status, my checking every now and then after the information I provided revealed that she had been Inactive for quite some time. However, upon my mentioning this and the conspiracy hatched against me in the federal lawsuit filed in USDC-MS (Case No. 3:07-cv-00099), Marcie resurfaced and apparently has ***active*** status since the filing of my lawsuit filed in February 2007. However, it appears she is solo. See **EXHIBIT "43"** attached hereto and incorporated by reference.

XI. PAGE KRUGER & HOLLAND ("PKH")

Is the law firm I was employed with at the time of my arrest on **February 14, 2006.** Prior to my termination of employment, the PKH did not advise me of any employment violations and neither was I on probation for any employment issues. In fact, during my employment, I was commended on my work ethics and sustain the Letter of References provided in EXHIBIT "4" of this instant action:

> TOMMY PAGE EMAIL – 06/16/05:
>
> TP: "***You looked very smart & professional as you walked toward the building!***"
>
> VN: "Why thank you. I strive to dress and carry myself in the manner in which PKH requires. ☺"
>
> TP: "You do it well."

See **EXHIBIT "44"** attached hereto and incorporated by reference

> Vogel, First and foremost, you are doing an **excellent** job. These are just a few things that I thought of that might save us both some time and help things flow smoother. . . - - SUSAN O. CARR

See **EXHIBIT "45"** attached hereto and incorporated by reference. It is important to note that since leaving PKH and from information obtained from research, Carr has since left PKH as well and is presently Law Clerk for one of the Mississippi Courts. See **EXHIBIT "46"** attached hereto and incorporated by reference.

Attached at **EXHIBIT "47"** is PKH Phone Directory/Roster; attached hereto and incorporated by reference.

IT IS IMPORTANT TO NOTE in looking at the PKH Phone Directory, during my employment with PKH and from my understanding, there was a Legal Assistant, John Noblin, who was an attorney; however, did not want to practice law. Therefore, as a filler (until something better came along) he worked at PKH. John later left PKH to accept another job opportunity (non-legal). John is the son of the Clerk of the Court - USDC – Southern District MS (Jackson Division) – J. T. Noblin. See **EXHIBIT "48"** attached hereto and incorporated by reference.

IT IS IMPORTANT TO NOTE that since my employment with PKH was terminated it appears that at least two of the attorneys are now working ***"WITHIN"*** the courts (judicial system) in Mississippi. Carr being a Clerk now and another attorney by the name of **A.B. (Trey) Smith III** is a judge in a Mississippi court. (See **EXHIBIT "49"** attached hereto and incorporated by reference).

> **EMPHASIS ADDED:** Because the evidence presented herein reveals the **"special"** relationships my former employers have with the courts.

The reasons provided me at the time of my termination are set out in my e-mail of May 15, 2006. Although I requested whether or not I would be given written reasons (pink slip) for my termination, PKH denied providing me with the grounds upon which they were basing their termination of my employment. Therefore, as a follow-up and to memorialize the reasons provided for my termination, I submitted their reasons for my termination in an e-mail:

> E-MAIL of 05/16/06 from Vogel Newsome to Louis J. Baine III (shareholder), Thomas Y. Page, Jr. (shareholder), Linda Thomas (Office Administrator) – providing the reasons given for my termination. Page Kruger & Holland's advising being contacted and having knowledge of lawsuit filed by me.

See **EXHIBIT "50"** attached hereto and incorporated by reference.

> E-MAIL of 03/30/06 regarding CONFLICT CHECK to Lawson Hester (shareholder) and providing Linda Thomas (Office Administrator) a copy on 06/31/06:
> VN: Lawson: I recently had a matter occur with a Constable of Hinds County, where I am presently considering. Would this present a conflict? Thanks.

NOTE: My concerns went unaddressed. See **EXHIBIT "51"** attached hereto and incorporated by reference. The record evidence further supporting that PKH was timely notified of my concerns of conflict in their representing Hinds County, as well as my advising of considering filing a lawsuit against Constable Lewis. It is important to note that this conflict was also

brought to my attention by another attorney, Raymond Fraser (African-American attorney with whom I worked and in whom I advised of what I was dealing with – aware of my arrest.) In fact, Fraser *advised me that he had tried to call me back on the day I was arrested in follow up to our telephone conversation because I had called him during the time Constable Lewis, Crews and others were in my residence to advise him of what was going on.* During said conversation Fraser confirmed that the actions being rendered by unlawful and his surprise in the way things were taking place since he had knowledge of the legal pleadings that were before the court which prohibited such practices.

It is important to note that Fraser also advised that I should talk to Jamie Travis (an African-American attorney at PKH – who during the time of my employment was an Associate; however, since my termination and the filing of lawsuit, it appears PKH has made him a shareholder –perhaps a move to buy his silence in that from my understanding during my employment Travis had been seeking shareholder status for a while and felt that he was entitled to it; however, PKH was not budging) in that Travis went to school with Judge Skinner and may be able to assist in getting the matter resolved. How would the average citizen with no connection to law firms, or the legal industry be aware of such a relationship? Based upon the information provided by Fraser, I have found the following: a) Travis completed laws school (Mississippi College of Law in **1999**) and was admitted to practice **09/28/1999**; and b) Judge Skinner completed law school (Mississippi College of Law in December **1998**, and was admitted to practice **4/27/99**). See Travis' Bio at **EXHIBIT "52"** and incorporated herein by reference, and Skinners Resume at EXHIBIT "20." However, I did not discuss this matter with Travis in that I knew that the actions rendered me were unlawful/illegal and the very acts of engaging Travis to seek what I took as "special" favors due to his relationship with Judge Skinner to me was unethical and clearly went to the very concerns that I realized that African-Americans have believed for years - the judicial system is tainted and the **"shady/corrupt"** dealings that take place behind the scenes. I definitely did not want to be a part of such corrupt practices that I as well, as other African-Americans, knew was present and the reason why the laws are so adverse towards them when faced with judicial and/or justice issues. Leaving me wondering whether or not Travis used my incident and/or PKH knew from my incident that making Travis a partner/shareholder was simply a **"buy-out"** tactic (for his silence) – giving him an interest in the firm in efforts of warring of any liability it knew it would be facing and any other possible conflicts of interest – due to Travis' (and perhaps others) relationship with Judge Skinner. I wanted justice to be based upon the statutes/laws and not upon such improprieties.

A. CCH EEOC DECISIONS:

> Charging Party was hired by Respondent on June 4, 1968, as a bookkeeper. On November 21, 1969, Charging Party was discharged. Charging Party asserts that he had never been reprimanded in connection with his work, and that his supervisor was antagonistic because he is a Spanish surnamed American and because he filed a charge of discrimination against another employer.

Respondent denies the charge and contends that Charging Party was discharged because he was belligerent, uncooperative and unable to perform work assigned.

One of three of Respondent's officials who participated in the decision to discharge Charging Party stated in an affidavit that he had contacted an employer against whom Charging Party had made a previous Commission charge. He states *that the employer* ***recommended*** *that "****we take action now for our own protection.****"* He also stated that "the material in (Charging Party's personnel file) gave indication the (Charging Party) was not rational (sic). The file reflected that he had filed a Civil Rights charge with EEOC. ***I was sure the same thing would eventually happen me.***" The record also reveals that Charging Party received salary increases of $50 and $75 per month in 1968, before Respondent became aware of Charging Party's earlier charge. There is no evidence on the record indicating that Respondent would have discharged Charging Party had it not been aware of Charging Party's earlier charge. Such an action based, at least in part, upon Charging Party's participation in Commission proceedings violates Section 704(a) of Title VII.

Decision: There is reasonable cause to believe that Respondent engaged in an unlawful employment practice in violation of Section 704(a) of Title VII of the Civil Rights Act of 1964 by discharging Charging Party.

See **EXHIBIT "53"** attached hereto and incorporated by reference.

B. 7 POF 2D RETALIATORY JOB TERMINATION § 4:

> Among employee activities that are protected against retaliatory discharge is the filing of formal unlawful employment practices charges with the EEOC or a state employment practices commission. The filing of charges is protected even if the charge contains collateral statements which are false and apparently malicious, and this includes charges filed against a previous employer. Also protected is an employee's participation in an EEOC investigation or proceeding, or his refusal to participate in proceedings commenced by another . . .

See **EXHIBIT "54"** attached hereto and incorporated by reference.

I believe Investigations will yield the Equal Employment Opportunity Commission's ("EEOC") officials roles in the conspiracy leveled against me and its failure to enforce the statutes/laws wherein it created and governed. Moreover, how the EEOC's officials/employees used its unlawful/illegal practices to create a ***pattern-of-practice*** against me and create its own profile of

me so that when I would bring complaints to its attention, they merely ignored the employment violations under Title VII as well as other Civil Rights statutes/laws upon which they were created and/or governed. Investigations into the EEOC' handling of the complaints I filed with it will also yield how I provided typewritten complaints containing facts, evidence and legal conclusions to sustain my complaint; however, they clearly elected to take a far departure from the statutes/laws to deprive me equal protection of the laws and due process of laws.

XII. ENTERGY

This is a company I was assigned to a contract position through an employment agency wherein I was subjected to discriminatory practices by the manger and a recently hired employee. **IT IS IMPORTANT TO NOTE** that after my filing with the EEOC both of these employees employment with Entergy ended. While I do not know the reasons, I believe a reasonable mind may conclude that based upon the facts, evidence and statutes/laws in place, violations under Title VII were found. However, do Legislature/Congress think the EEOC or Entergy made this information public. No. They kept it to themselves and whether than prosecute and hold Entergy liable for said violations, it simply provided me with a Right to Sue Letter. Depriving me rights secured under the Constitution, Title VII, Civil Rights Act and other statutes/laws governing said matters.

The laws are clear that decisions/rulings/judgments entered that lack evidence, legal conclusions to sustain them are deemed to be arbitrary and/or capricious. Moreover, rendered in bad faith and to deprive one equal protection of the laws and due process of laws; furthermore, obstruct the administration of justice.

I AM REQUESTING the Legislature/Congress obtain the records of the EEOC, initiate an investigation into its handling of the Charge submitted by me, hold hearings and render its Findings and/or decisions based upon said investigation. If said violations as to my Constitutional Rights, Civil Rights, etc. are found, that the applicable actions be taken to deter such unlawful/illegal and unethical practices – restoring the integrity and the public confidence in said entity.

I AM REQUESTING the Legislature/Congress based on the information presented herein, initiate Investigations, hold Hearings and render its Findings and/or decisions in regards to the USDC's handling of the lawsuit filed by me. If said violations as to my Constitutional Rights, Civil Rights, etc. are found, that the applicable actions be taken to deter such unlawful/illegal and unethical practices – restoring the integrity and the public confidence in said entity.

XIII. MITCHELL McNUTT & SAMS ("MMS")

Former employer of mine who subjected me to very very. . . hostile, sexual and discriminatory treatment. Also encouraged and/or condoned its employees providing of false information during government investigation for purposes of depriving me rights secured under the Constitution, Civil Rights Act, and other statutes/laws for the purpose of obstructing the administration of justice, depriving me equal protection of the laws, due process of laws, etc.

CUT & PASTED FROM: http://miami.**fbi**.gov/statutes/title_18/section1001.htm

Title 18, U.S.C., Section 1001 - False Statements or Entries Generally

> This statute makes it a crime for falsifying, concealing, or covering up material facts surrounding a civil rights investigation, or making false statements, representations, or writings.
>
> This law prohibits a person acting under color of law, statute, ordinance, regulation or custom to make false statements or misrepresentations surrounding their individual or collective actions, during a civil rights investigation. It has been successfully applied to civil rights investigations involving the loss of life, ***where the subjects of the investigation lied to protect their careers and those of other co-conspirators.***
>
> Punishment varies from a fine or imprisonment of up to five years or both.

MMS conducting and/or operating a business in which it knew it was violating the Fair Labor Standards Act ("FLSA"), Title VII, Occupational Safety & Health Administration ("OSHA"). I brought such unlawful practices to MMS' attention and as a direct and proximate result, the MMS allowed its employees to subject me to retaliatory practices, constant hostile, sexual and discriminatory practices. MMS was aware of their employees' unlawful/illegal actions towards me; however, did nothing to deter such behavior. Instead, MMS moved to terminate and/or fire me. **IT IS IMPORTANT TO NOTE:** I was able to obtain such admission of hostile, sexual harassment and discrimination from MMS' employees during cross examination during the Mississippi Department of Employment Security handling of my request for Unemployment Benefits. Such examination will further support MMS' willingness to produce employees who are willing to falsify and/or perjure themselves to protect their jobs and to see that I am deprived unemployment benefits. (See **EXHIBIT "59"** – Excerpt of Transcript attached hereto and incorporated by reference.)

A. MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY ("MDES")

Decision Code No. 2400
Reporting Point No. 0480
Case No. 00002-R-05-01 and 00241-R-05-01
Circuit Court Case No. 251-2005-163CIV

The record evidence will support a pattern-of-practice and how and how Defendants have a total disrespect for the laws and place themselves above the laws, relying upon the **special** favors of government employees and/or Courts. Moreover, their links ties to key organizations. How they stopped at nothing to deprive me the relief I sought through the action with the MDES. How MMS' employees were willing to come before the MDES and produce information they knew to be false and/or misleading. They came with what they thought was a well laid out plan, that before they knew it, they were providing testimony to support my claims of retaliation, discrimination, hostile treatment, etc.

> *DeCarlo v. Bonus Stores, Inc.*, 413 F.Supp.2d 770 (S.D.Miss.,2006.) - In his complaint, McArn charged that Terminix maliciously defamed him before the Mississippi Employment Security Commission by stating he was fired for a "bad attitude." At trial, McArn testified that Terminix's contention that he was insubordinate was false. That is the extent of McArn's evidence of defamation.
>
> (n. 10) Under Mississippi law, public policy exception to employment at will doctrine permits employee to bring action in tort for damages against his employer if he is terminated for: **(1)** *refusing to participate in illegal act*, or **(2)** **reporting** *illegal acts of his employer to employer or anyone else.*
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> *McArn v. Allied Bruce-Terminix Co., Inc.*, 626 So.2d 603 (Miss.,1993) - [3] McArn argues that the Mississippi Employment Security Commission was falsely told that he was terminated for a bad attitude and not told the true reason for his firing. McArn argues that Miss.Code Ann. § 71-5-131 (1972) permits a claim for defamation whenever the employer makes statements to the Commission which are "false in fact and maliciously ... made for the purpose of causing a denial of benefits."
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> There is no question but that Miss.Code Ann. § 71-5-131 provides that communications between an employer and the Commission are privileged and "when qualified privilege is established, statements or written communications are not actionable as slanderous or libelous absent bad faith or malice if the communications are limited to those persons who have a legitimate and direct interest in the subject matter." Benson v. Hall, 339 So.2d 570, 573 (Miss.1976).
>
> In his complaint, McArn charged that Terminix maliciously defamed him before the Mississippi Employment Security Commission by stating he was fired for a "bad attitude." At trial, McArn testified that Terminix's contention that he was

insubordinate was false. That is the extent of McArn's evidence of defamation.

See **EXHIBIT "59"** Testimony taken under cross-examination and former employer admitting to discriminatory practices and harassment of me. Information was easily obtainable had the government agency(s) to which I filed complaints, would have found if they really wanted to determine the truth and/or merits of my claims; however, failed to uphold the laws as a direct and proximate result of depriving me equal protection of the laws and due process of laws. The record evidence supports that MMS falsely accused me of insubordination and deliberately created situations through their retaliatory practices which required my objections. Moreover, that MMS and employees were aware of my reporting of such unlawful/illegal practices by them.

I REQUEST the Legislature/Congress initiate an Investigation, obtain the record in the MDES action, hold Hearings to determine whether there were violations of my Constitutional/Civil Rights. Moreover, MMS' as well as the MDES role (if any) played in the conspiracy alleged. I believe that an investigation may also yield that as MMS did with the Wage & Hour Division, they provided MDES with information clearly outside the proceedings addressing my engagement in protected activities; or, the MDES took it upon itself to deprive me of rights guaranteed/secured under the Constitution, Civil Rights Act and/or governing statutes because of its knowledge of my engagement in protected activities.

B. <u>OCCUPATIONAL SAFTY & HEALTH ADMINISTRATION ("OSHA")</u>
Case No. 4-1220-04-027 or 4-1220-05-04

I REQUEST the Legislature/Congress initiate an Investigation, obtain the record in the OSHA action, hold Hearings to determine whether there were violations of my Constitutional/Civil Rights. Moreover, MMS' as well as the OSHA's role (if any) played in the conspiracy alleged. I believe that an investigation may also yield that as MMS did with the Wage & Hour Division, they provided OSHA with information clearly outside the proceedings addressing my engagement in protected activities; or, the OSHA took it upon itself to deprive me of rights guaranteed/secured under the Constitution, Civil Rights Act and/or governing statutes because of its knowledge of my engagement in protected activities.

C. <u>EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ("EEOC"):</u>
Case No. 131-2005-01442

I REQUEST the Legislature/Congress initiate an Investigation, obtain the record in the EEOC action, hold Hearings to determine whether there were violations of my Constitutional/Civil Rights. Moreover, MMS' as well as the EEOC's role (if any) played in the conspiracy alleged. I believe that an investigation may also yield that as MMS did with the Wage & Hour Division, they provided EEOC with information clearly outside the proceedings addressing my engagement in protected activities; or, the EEOC took it upon itself to deprive me of rights guaranteed/secured under the Constitution, Civil Rights Act and/or governing statutes because of its knowledge of my engagement in protected activities.

Furthermore, I am requesting that the Legislature/Congress Investigate the handling of ALL charges I have filed with the EEOC and determine whether the ruling of each charge was influenced by any other charges that I may have filed. Moreover, whether or not the EEOC's officials/employees engaged in any conspiracy alleged by me and/or entered arbitrary rulings for purposes of aiding the employer. I believe a reasonable mind may conclude that based upon all of the Charges I filed with the EEOC, there was sufficient information to warrant an investigation and to see that employers were sanctioned and/or required to comply with the laws. However, this did not happen and the EEOC merely engaged in a "pattern-building" manner and unlawfully/illegally dismissed valid charges for failure of not wanting to perform their duties. I am requesting that if said violations are found by the EEOC and its officials/employees that the proper punishment be rendered to deter such actions in the future. Moreover, the EEOC has repeated evidenced its lack of ability to abide by the statutes/laws upon which it was created. Therefore, I would request that the Legislature/Congress determine whether or not the EEOC needs to continue to operate and/or exist. Apparently from my charges brought, they are not enforced the statutes/laws upon it was created. Therefore, not having any purposes for existing and needs to be dismantled and/or overhauled with employees that are willing uphold the statutes/laws.

D. <u>WAGE & HOUR DIVISION ("WHD"):</u>

The record evidence will support that the Department of Justice/Office of Solicitor General, U.S. Department of Labor/ESA – Wage and Hour Division, and Administrative Review Board were timely properly and adequately placed on notice of MMS violation of the FLSA. To no avail. Said agency(s) records will support sufficient facts, evidence and legal conclusions presented to sustain the complaint and/or concerns I brought to its attention. ***While these agency(s) were aware of MMS' violation of the laws governing the FLSA and/or Wage and Hour Laws, <u>they</u> <u>did</u> <u>nothing</u> to deter such acts or to see that the wrongs complained of were corrected and that the injustices rendered against me as a direct and proximate result of my reporting said violations were corrected. Instead said agency, its agents and others engaged in conspiracy.***

U.S. Department of Labor – **FLSA NARRATIVE REPORT**:

> <u>Evidence</u>: Interviews of Supervisor Robert Gordon, Attorney Mike Farrell, and Secretary Ladye Margaret Townsend[8] revealed that Ms. Newsome had been rebellious and insubordinate in job duties assigned her from the start of her employment.
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> [redacted] interview (Exhibit [redacted]) stated that every since Ms Newsome was hired she been looking for a way to get fired to

[8] All of whom are "White" and having a personal interest and financial interest (either employment and/or business investment related).

pursue a lawsuit. . . After this incident Ms Newsome began working on whether she was paid properly . . . Newsome disagreed with Attorney Farrell and told Cochanuer and Townsend she was going to contact Wage Hour. [redacted] didn't know if Newsome did or not because nothing came of it. [redacted] further confirmed other events of insubordination. (Exhibit [redacted]).

Further action:
[redacted]

(Note) During the course of this investigation, District Director ("DD") Billy Jones retired from the department. Regional Administrator McKeon assigned Assistant District Director ("ADD") Oliver Peebles as Acting DD fro the Gulf Coast District. DD Peebles has been advised through all actions of this case, and all of his instructions have been followed.

See **EXHIBIT "60"** attached hereto and incorporated by reference. I believe the redacted information is pertinent, that I may not have been provided with the entire file. *During my employment with MMS, I noticed how Billy Jones would call quite often requesting to speak to Michael Farrell (one of the attorneys). I found it interesting because during one of the meetings with Farrell, he made it known how he was familiar with the Wage & Hour Division; moreover, how he had the employees personal direct lines and provided such information.* I believe an Investigation by the Legislature/Congress may yield evidence of the government agency(s) and/or its agents cover-up in aiding her former employers in covering up civil/criminal wrongs rendered against me. Moreover, how they secretly handled issues evidencing the wrongs complained of by me; however, failed to assure that the employers were required to come into compliance with the laws. For instance, while they wanted me to believe I did not understand the FLSA and that my employer was not in violation, such is not the case. Prior to bring ingsuch action, I spoke with an attorney I had worked with at another firm and said attorney confirmed my understanding of the statute/laws was correct. In fact, said attorney had also advised that they had recently represented a client who was paying its employees in the same way as MMS and violations were found and the matter was resolved. Moreover, such confirmation has been solidified with my present employer – that my understanding of the FLSA was correct.

IT IS IMPORANT TO ALSO NOTE that shortly after being employed with **PKH,** one of the attorneys brought it to my attention that PKH was recently found to be in violation and sanctioned. This is pertinent information, because an investigation will yield that although PKH was sanctioned, it was still operating in violation of the laws during my employment. Thus, going to additional motive behind my unlawful/illegal termination. Not only that, it goes to the fact that there are many employers that are operating in violation of the FLSA and/or Wage & Hour laws and the WHD is aware of such and discriminatively apply the laws to employers – sanctioning some and allowing some to continue to practice in ways contrary to the statutes/laws governing payment of employees wages. THIS IS IMPORTANT in that the public at large is

affected and employers are relying upon unlawful/illegal methods to keep from having to pay their employees their full wages.

IT IS IMPORTANT TO NOTE that to have found MMS in violation, MMS would have been required to compensate all of its employees (hourly/salaried/non-exempt) back wages owed for all of the time in which they had been practicing in such a manner. For the WHD to have acknowledged the violations would have been very costly in that MMS, PKH and others who have been conducting business in violation of the FLSA and/or Wage & Hour laws for quite some time. Moreover, an investigation by the Legislature/Congress would yield the name of government employees that knew of such violations and did nothing – allowing MMS, PKH and others to continue in a manner they knew were in violation of the FLSA and/or Wage & Hour laws.

> **MISSISSIPPI CODE OF 1972**
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> **SEC. 97-9-61. Perjury; penalty.**
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> Persons convicted of perjury shall be punished by imprisonment in the penitentiary as follows: For perjury committed on the trial of any indictment for a capital offense or for any other felony, for a term not less than ten years; for perjury committed on any other judicial trial or inquiry, or in any other case, for a term **not exceeding ten years**.
>
> **SOURCES:** Codes, Hutchinson's 1848, ch. 64, art. 12, Title 5(2); 1857, ch. 64, art. 205; 1871, Sec. 2661; 1880, Sec. 2922; 1892, Sec. 1244; 1906, Sec. 1319; Hemingway's 1917, Sec. 1052; 1930, Sec. 1083; 1942, Sec. 2316.

CUT & PASTED FROM: http://www.mscode.com/free/statutes/97/009/0061.htm. See **EXHIBIT "61"** attached hereto and incorporated by reference.

It appears from the information obtained MMS employees were willing for falsify and/or provide false statements for the purposes of obstructing the administration of justice and to see that I was deprived the relief sought. See **Title 18, U.S.C., Section 1001 - False Statements . . .** above.

IT IS IMPORTANT TO NOTE: That prior to filing my claim with the Jackson Wage & Hour Division, I had spoken with an attorney at another law firm where I worked and this attorney advised me that my understanding of the law was correct and that their firm had just settled a matter for one of their clients because the client was paying in such a manner as MMS. Moreover, also important to note, my present employer have lawyers who have experience and understanding of the laws governing said matters and my working there has confirmed my understanding of the FLSA and/or Wage & Hour statutes/laws. Further, confirmed my understanding the method of payment that MMS was using prior to and during my employment was in violation of the FLSA and/or Wage & Hour laws.

E. PUBLIC INTEREST:

I believe this matter is of public concern in that it affects the financial welfare and/or being of other citizens. I believe an Investigation by the Legislature/Congress will yield findings that employers who use such unlawful/illegal practices to deprive employees has knowingly done so with the willful and malicious intent to withhold wages/earnings from its employees. Furthermore, the Wage & Hour Division's assistance and condoning such unlawful/illegal practices; because to find in favor of the evidence (such as that presented by me), will require that MMS compensate its employees as well as myself for the **unpaid** wages earned that they failed to pay. Thus, being a huge financial hit on MMS. However, had they complied with the statutes/laws, they would not now be required to compensate employees for the monies/wages illegally/unlawfully withheld.

IT IS IMPORTANT TO NOTE: That there is a Mississippi Appeals Court Judge who was employed by MMS prior to taking judgeship role. This judge's name is Donna Barnes. See **EXHIBIT "62"** attached hereto and incorporated by reference. I also attach a copy of the MMS Phone Directory for its employees during my employment. See **EXHIBIT "62"** attached hereto and incorporated by reference.

IT IS IMPORTANT TO NOTE: That it appears MMS has closed its Jackson, Mississippi Office in which I was working AFTER the MDES matter and their receipt of the Transcript provided from the MDES hearing. However, while the MDES was in the position to deter and punish MMS and its employees for the unlawful/illegal actions committed against me, said government agency failed to do so for the purposes of aiding MMS and its employees. So attorneys Mike Farrell and Robert Gordon along with co-worker Ladye Margaret Townsend would have to look elsewhere. MMS closing of the downtown Jackson, Mississippi location when they had moved into the facility about May 2004, and had had plans of expanding.

F. BOARD OF REVIEW – U.S. DEPARTMENT OF LABOR:

I request the Legislature/Congress intervention and that the necessary Investigations, Hearings and Findings be rendered in that I believe the record evidence will also yield how I did not leave this matter in the hands of the Jackson Office to resolve – out of concerns of conspiracy acts and relationships with Billy Jones and/or other government agents/employees with MMS and others; Moreover, said relationships would preclude government agencies and/or their employees from remaining fair, just and impartial in the handling of this matter. Nevertheless, I believe the Legislature/Congress will find that although I took extra steps to see that justice prevailed, even taking the matter to Washington, D.C. for handling, also proved to be *futile*. Providing several officers with pertinent evidence to sustain my defense and to expose the unlawful/illegal practices of MMS. See **EXHIBIT "63"** attached hereto and incorporated by reference. Moreover, that Billy Jones (District Director of the Wage & Hour Division) was timely notified of my concerns and the Wage & Hour Division's failure to enforce the laws. WHD being given the opportunity to correct its error. To no avail. WHD was determined to render MMS special favors based upon the established relationships it had with MMS and its employees. See **EXHIBIT "64"** attached hereto and incorporated by reference.

IT IS IMPORTANT TO NOTE that I went as far as also notifying the ***Secretary of Labor***, Elaine L. Chao. Still the Department of Labor did nothing to see that MMS compensate me (and/or its salaried/non-exempt employees) for unpaid wages earned. I believe an investigation will yield how the Department of Labor shielded such unlawful/illegal acts from me as well as the public in an effort to protect and/or render MMS Special favors. See **EXHIBIT "65"** attached hereto and incorporated by reference. Said Exhibit is merely provided to evidence that documentation is in the record of the Department of Labor as well as with the office of the Secretary of Labor. *This being one of many documentation to said office to notify them of the unlawful/illegal actions of MMS. Merely, getting Billy Jones to leave without exposing the unlawful/illegal actions of MMS was merely a bandage and did nothing to deter and/or end such unlawful/illegal actions by MMS. Moreover, was done to make it appear that I had no valid charge where in fact I was correct in the reporting of the unlawful/illegal actions of MMS.*

XIV. AGENCY ACTIONS

I am requesting the Legislature/Congress' intervention and Investigations, Hearings be held and their Findings submitted in regards to the government entities (EEOC, Wage & Hour Division, OSHA, United States Federal and State Courts, etc.) handling of matters presented by me and/or on my behalf. Moreover, whether I have been deprived of Constitutional Rights, Civil Rights and /or any other rights secured/guaranteed under the statutes/laws under which they are governed to determine whether additional laws need to be created to correct such injustices, for the enforcement of such laws and any and all other recourse the Legislature/Congress is available to the public to address such legal wrongs complained of herein.

I believe that the record evidence of this Court will support that I have been repeatedly subjected to discriminatory handling/treatment of complaints filed by me and/or on my behalf. Moreover, that government entity has allowed continued practices such as those displayed by my former employers and others as exhibited and/or evidenced in this instant Complaint with the Legislature/Congress. Moreover, how confident ***"certain"*** Whites are and their total disrespect for the laws and the rights of African-Americans and/or people of color. So confident, that as in USDC-MS actions as well as other government-entity actions, said persons are so comfortable in coming before the fact-finders and are willing to commit perjury and/or provide false information that they know is clearly prohibited by laws. Therefore, I seek the intervention of the Legislature/Congress to address such Constitutional violations and direct the enforcement of laws to punish such acts.

IT IS IMPORTANT TO NOTE that in the complaints that I have submitted to the government entities mentioned in this instant Complaint, said complaints with those entities were supported by evidence and/or provided sufficient information as to where the evidence could be found; as well as provided sufficient information to provide government agencies with facts to guide them in the right direction where to obtain additional information had they in good faith wanted to uphold the statutes/laws under which they were governed. For example, with MMS an investigation by the Legislature/Congress will yield that I filed a timely **typewritten** *Charge of*

Discrimination Complaint against MMS with the EEOC; however, the EEOC refused to perform the ministerial duties owed me in its efforts to aid MMS and in furtherance of the conspiracy I have alleged. See **EXHIBIT "66"** attached hereto and incorporated by reference. Moreover, a timely Retaliation Complaint against MMS was also filed with the EEOC. Again, to no avail, because of efforts of this agencies determination to aid MMS and its employees in depriving rights secured under the Constitution, Civil Rights Act, Title VII, and/or the applicable governing statutes/laws. See **EXHIBIT "67"** attached hereto and incorporated by reference.

XV. MISSISSIPPI COMMISSION OF JUDICIAL PERFORMANCE ("MCJP")

I believe that the Legislature/Congress' intervention is also necessary to initiate Investigations, Hearings and render their Findings as to the actions of government officers, as well as attorneys actions and/or conduct that have engaged in the unlawful/illegal and unethical practices rendered me. I believe the record evidence will support that due to the "special" relationships that my former employers have established with government entity officials, to continue to file complaints with the required Associations to exposes the unethical practices of government officials, would prove to be futile. Therefore, the Legislature/Congress is hereby being requested to handled said matters.

For example, the record evidence will support that I filed a timely typewritten Complaint regarding Judge Skinner with the MCJP; however, they elected not to correct the wrongs timely, properly and adequately presented to it. Judge Skinner wherein the record provided herein establishes his strong ties to government operations and the ability to influence decisions based upon well-established relationships. The MCJP allowing a judge they knew and/or should have known based on the information provided and information that would have surfaced during an investigation to continue to obtain the bench rather than have him removed and/or the applicable actions taken deter such conduct in the future. Judge Skinner from my understanding who attempted to seek a position with the highest court (Mississippi Supreme Court); however, lost. So now it appears he is working his way up the judicial chain so that his next run for the Mississippi Supreme Court is successful – starting out in the Hinds County Justice Court and now he has moved up to the Hinds County Court. This is a judge in which the record evidence supports that he has his own laws and renders ruling clearly contrary to the statutes/laws for purposes of furthering his own agenda and rendering "special" favors to his friends, associates, colleagues, etc.

Therefore, I now come before the Legislature/Congress to request an Investigation, Hearings and its Findings as to the actions of Judge William Skinner. Moreover, now the actions of the Judges/Magistrates in the USDC-MS actions – that they be required to provide testimony and evidence to rebut that presented by me and in the record of courts to support their "judicial abuse." Moreover, the evidence provided in Skinner's Resume will support that he had extensive training in the Landlord & Tenant laws; however, elected to take a far departure from the laws and allow the abuse and/or use in the handling of Service of Process for purposes of illegally/unlawfully obtaining jurisdiction over citizens (over the citizens objections). For example: **a)** Skinner did not operate with the guidelines of the Code of Judicial Conduct

governing Justice Court officials - See **EXHIBIT "68"** attached hereto and incorporated by reference; **b)** Skinner knew and/or should have known that Summons and Complaint was not handled in compliance with the statutes/laws of the state of Mississippi and neither was I given the time to respond in accordance with the laws governing said matters because the Landlord was attempting to obtain property through unlawful/illegal manner. See **EXHIBIT "68"** attached hereto and incorporated by reference; and **c)** that even the Mississippi Justice Court Guide provides helpful information to judges to aid them in determining whether Process was perfected. See **EXHIBIT "69"** attached hereto and incorporated by reference. Nevertheless, Skinner takes it upon himself to create and determine his own justice rather than uphold the laws of the state in which he presides. The evidence provided through is Resume reveals that he is an officer of the Mississippi Justice Court Judges Association – **President** (2005-2006 and 2006-2007) – See EXHIBIT "20" attached hereto..

IT IS IMPORANT TO NOTE that a timely complaint was filed with the MCJP against Judge Skinner. See **EXHIBIT "70"** attached hereto and incorporated by reference. However, the MCJP elected not to do anything and failed to address all of the issues raised against Judge Skinner. See **EXHIBIT "71"** attached hereto and incorporated by reference. I submitted my timely objections to the handling of the MCJP handling of this matter. To no avail. Said submittal proved to be futile. Thus, requiring the Legislature/Congress' intervention. See **EXHIBIT "72"** attached hereto and incorporated by reference.

IT IS IMPORTANT TO REITERATE that I believe Judge Skinner's *goal is the Mississippi Supreme Court and/or higher courts* in which the record evidence will sustain he **is not** qualified as well as the harm that would be rendered the public if he is continued to climb the judicial ladder in which he displaying and rendering clearly arbitrary and/or capricious rulings for the purposes of depriving citizens justice and "special" favors to persons/groups in which he has personal interest and/or gains. Moreover, raising serious concerns that Skinners pursuit of such positions are merely masking his ties to "racist" organizations such as the KKK and the furtherance of said racist organizations agendas underhandedly. Because it is clear that Skinner does not operate within the guidelines of the laws.

IT IS IMPORANT TO NOTE that due to the "special" relationships and/or ties my former employers have to major organizations – such as the Mississippi Defense Lawyers Association (wherein attorneys holding key positions such as "President/President-Elect," "Vice President" – as James D. Holland and W. Wright Hill, Jr. of PKH - See **EXHIBIT "73"** attached hereto and incorporated by reference; and PKH employing John Noblin, son of the Clerk of the Court USDC-MS) - which I believe has made it very difficult for me to obtain justice through the appropriate legal and/or judicial process based on such "special" relationships and the conspiracy leveled against me. Furthermore, the record evidence will support that my termination at PKH was deliberately orchestrated through said conspiracy to destroy my life. In fact, my termination with PKH occurred on or about **Monday,** May 15, 2006 – only **three** days before my court hearing on Thursday, May 18, 2006, in the Hinds County Court regarding Motions (such as my attorney Brandon Dorsey's Motion to Withdraw as my attorney, Injunctive Relief I was seeking, etc.) See **EXHIBIT "74"** attached hereto and incorporated by reference. Which clearly evidences a NEXUS between my termination of employment and my participation in a protected activity and PKH's efforts to aid opposing counsel in the lawsuit in which I filed –

my termination coming cause me financial devastation and preclude me from defending lawsuit. Moreover, said court's granting of an unlawful withdrawal to provide the opposing with an undue/unfair advantage over me – "White" justice in full form.

IT IS IMPORTANT TO NOTE that "personal" and/or "special" interest has been confirmed in the USDC-MS matter. Magistrate Judge has recused himself – not before committing judicial abuse and/or unlawful/illegal and unethical practices – for "conflict of interest." However, he failed to disclose to parties what said conflict was as required by law. Furthermore, in efforts of hiding his hand, he failed to provide me with a copy of his Order and I had to retain a copy through other process. See **EXHIBIT "75"** attached hereto and incorporated by reference. Magistrate Judge prior to filing his recusal order filed a ruling requiring me to pay a bond to proceed with my lawsuit. As a matter of law, said illegal bond setting, is prohibited by laws and neither can the court provide evidence to sustain the issuance of such an order. Upon review of the complaint filed in the USDC-MS wherein said court is requiring bond, it will be found that said complaint was drafted in compliance with the statutes/laws governing federal actions; moreover, that the complaint is sustained by "factual" evidence and "legal" conclusions to support the relief sought therein. NEVERTHELESS, as the record will reveal Judges in the USDC-MS action is attempting to uphold the void/null Order of the Magistrate Judge although timely objections, facts, evidence and legal conclusions have been presented to support that the court cannot require the bond sought. See **EXHIBIT "76"** attached hereto and incorporated by reference.

IT IS IMPORTANT TO NOTE that the proper pleading has been filed with the USDC-MS for the certification of the record in preparation for review and/or intervention by the Legislature/Congress. See **EXHIBIT "77"** attached hereto and incorporated by reference.

IT IS IMPORTANT TO NOTE that the USDC-MS is unlawfully/illegally attempting to deprive me access to said court and has entered arbitrary rulings/decisions to that effect. I have filed timely objections to said rulings which are in the record of said court. **THEREFORE, DUE TO THE FACT THAT THE USDC-MS IS ATTEMPING TO CLOSE ITS DOORS TO ME, THE LEGISLATURE/CONGRESS' INTERVENTION IS SOUGHT TO CREATE AN APPLICABLE SUPERIOR COURT AND/OR COMMITTEE TO PULL USDC-MS DOCUMENTS AS WELL AS OTHERS THAT ARE BEING REQUESTED THROUGH THIS INSTANT COMPLAINT.**

IT IS IMPORTANT TO NOTE that such unlawful/illegal and unethical actions by the USDC-MS in attempting to close its doors to me is also an attempt by said courts to aid PKH, MMS and others against future lawsuits they have been notified are to be filed by me. For example, MMS was timely placed on notice of my intent to file legal action through the judicial process - See **EXHIBIT "77"** attached hereto and incorporated by reference – as well as PKH, see EXHIBIT "50" attached hereto.

XVI. MY ATTORNEYS

I request the Legislature/Congress Investigate, hold Hearings and render its Findings on my attorneys' handling of the lawsuits in which they represented me. Moreover, inquire into the reasons for their **unlawful/illegal and unethical withdrawals** as well as their unlawful/illegal handling of my lawsuits. While the Legislature/Congress may want to direct me to the appropriate agency (Bar Association of the state in which attorneys practice, I believe the record evidence will sustain that such efforts would prove to be futile as a direct and proximate result of the ties/relationships attorney may have with the fact-finders of said association; moreover, how it would be apparent that the association would do nothing in that it would rely upon information outside the proceedings – my participation in protected activities to cloud their judgment). Therefore, the Legislature/Congress' intervention is being sought.

The USDC-MS is presently attempting to **close its doors** to me unless I subject myself to the ***illegal bond setting*** *they have implemented.* The investigation of my attorneys' handling is also pertinent in that it clearly supports the attorneys' belief in the merits of my lawsuits; however, for some apparent reason they abruptly move to withdraw and clearly elect to violate the Code of Professional Conduct, etc. for the purposes of aiding the court as well as opposing counsel in depriving me the relief sought through the legal actions in which they were retained to represent me. Moreover, such an Investigation, Hearings and Findings are necessary in that upon the court's and the conspirators' success in inducing my attorneys to commit civil/criminal wrongs against me through their unlawful/illegal and unethical practices, ***I was left with having to proceed pro se to preserve my rights in the lawsuits involved***. Therefore, I request the Legislature/Congress Investigate, hold Hearings and render its Findings regarding attorneys conduct:

Brandon I. Dorsey was the first attorney I retained to represent me in the civil matter against leading to the USDC-MS actions. Upon being contacted and being provided with documentation of previous lawsuits by me, he abruptly moved for a withdrawal and deliberately and knowingly provided information he knew to be false and/or misleading. While I knew that such actions by Dorsey were unlawful and unethical and contested his withdrawal, the court obliged him for the purposes of aiding opposing counsel and providing opposing parties with an undue/illegal and unlawful advantage over me. Dorsey advised me during his representation of me, that he ***has to live in Mississippi and feed his family*** – not being able to handle the pressure from opposing counsel and others. See **Title 42, U.S.C., Section 3631 - Criminal Interference with Right to Fair Housing** above. Dorsey required a Retainer to represent me, which he returned. However, this does not shield him from any investigation by the Legislature/Congress to determine whether or not such actions by him violated my Constitutional and Civil Rights and/or statutes/laws governing said matters. Moreover, his role (if any) played in the furtherance of the conspiracy alleged by me in the USDC-MS (3:07-cv-00099) action.

Wanda X. Abioto was the second attorney I retained to represent me in the civil matter after Dorsey abandoned me and has recently filed a *Motion to Withdraw* after representing me in the County Court and authorizing the filing of the Complaint in Federal Court. She represents me in USDC-MS Case No. 3:07-cv-00560. See **EXHIBIT "55"** the Complaint submitted on my behalf – attached hereto and incorporated by reference. While Abioto submitted her Motion to

Withdraw, said motion was met with my opposition pleading. See EXHIBIT "10" attached hereto and incorporated by reference. From said pleading and the supporting attachments, I believe the Legislature/Congress may reach the same conclusion that I did upon doing research on Abioto, that opposing counsel may have obtained information regarding her sanctions by the Tennessee Bar and Mississippi Bar and used such information to strong-arm her in abandoning me; moreover, taken to get her to throw the lawsuit – wherein she tried in her deliberate and willful acts in not having one of the defendants (only one I gave her to handle in that I had process serve handle service on other parties) in said action served. As a matter or law, such error has been corrected by this defendant's attorney, Monroe, filing a joint pleading with a properly served defendant, Melody Crews. She clearly ignored my e-mails and phone calls requesting she contact me. I had to find out through Monroe's filings on behalf of his clients what he had been up to – badgering, harassing and attempting to get Abioto to withdraw the lawsuit filed on my behalf. Monroe making such threats and attacks on Abioto via correspondence. See **EXHIBIT "56"** attached hereto and incorporated by reference. Monroe going as far as requesting "in court hearing," which was timely met with my objections. See EXHIBIT "9" attached hereto. The actions of Monroe clearly is prohibited by statutes/laws. See **Title 42, U.S.C., Section 3631 - Criminal Interference with Right to Fair Housing** above. Abioto required a Retainer to represent me, which she has only returned $500 and apparently spent the rest. However, this does not shield her from any investigation by the Legislature/Congress to determine whether or not such actions by her violated my Constitutional and Civil Rights and/or statutes/laws governing said matters. Moreover, her role (if any) played in the furtherance of the conspiracy alleged by me in the USDC-MS (3:07-cv-00099) action.

Richard Rehfeldt was the attorney I retained to represent me in the criminal matter arising out of my February 14, 2006 unlawful/illegal arrest. While he was retained to represent me, protect my interest and rights, I believe he may have conspired with opposing counsel in my civil lawsuit(s) and others to set me up and their goal was to obtain a "guilty" verdict. I am also concerned that the FBI would have been in on such unlawful/illegal activities had not put them on notice through my correspondence addressing concerns of corrupt practices – See **EXHIBIT "57"** – 10/01/07 Correspondence to FBI *"Concerns of FBI Cover-Up of Criminal Actions; Status of Findings Regarding June 26, 2006 Complaint Filed With FBI"* – attached hereto and incorporated by reference. I believe the FBI would have aided in the unlawful conviction of me; however upon receipt of my October 1, 2007 correspondence and not certain what other persons were obtaining copies of this document, **squashed** their plans to railroad me. *The "CONSPIRACY" plan was to find me "guilty" so that the **"certain"** Whites (Judge Skinner, Hinds County, Sheriff, etc) and their counsel would have a defense against the civil lawsuit I had filed.* Unbeknownst to Rehfeldt, he was not aware that I had contacted the FBI. I knew after my meeting with him in August 2007, that he would probably attempt to compromise my case. Therefore, I contacted the FBI. See **EXHIBIT "58"** – E-mails to Richard Rehfeldt. I gathered from my August 2007 meeting with Mr. Rehfeldt, when he was trying to set me up to accept being found guilty that he did not like the fact that I would research information he provided to determine whether his advice was accurate. He was employed to represent me and I wanted to be sure that my rights and interests were protected. It was apparent Rehfeldt did not expect me to go and research the laws to determine the best defense. He thought I was going to be stupid enough to place everything in his hands without feedback. It was a good thing I did not do this because it was clearly a setup. I provided Rehfeldt with instructions on how I wanted him to

proceed with the representation of me in the criminal matter. From the ***deliberate*** acts of Rehfeldt – in his failing to notify me of the court date, it is obvious that he was working with others to assure that I would not appear in court in hopes of getting the court to find me guilty. It will be very interesting to find out what explanation he provided the court for my absence. I do know he attempted to call me after everything to pretend like he did not know why I was not there in court. The reason being because he deliberately failed to advise me of the court date that had been set on the charges brought by Constable Jon Lewis. Rehfeldt required a Retainer to represent me, which to date he has not returned any unearned portion. However, this does not shield him from any investigation by the Legislature/Congress to determine whether or not such actions by his violated my Constitutional and Civil Rights and/or statutes/laws governing said matters. Moreover, his role (if any) played in the furtherance of the conspiracy alleged by me in the USDC-MS (3:07-cv-00099) action.

XVII. KENTUCKY MATTER

Before I begin to address the Kentucky issue, I believe it is important to raise my concerns as to how there appears to be a systematic and/or well-designed conspiracy network between "certain" whites across states and/or the country. From the information contained in this record, the evidence will yield a *pattern-of-**organized**-criminal* wrongs involving government entities/employees to oppress African-Americans and/or people of color seeking to exercise rights under the Civil Rights Act, Title VII, Fair Housing Act, Constitution, etc. – the laws created and designed to protect persons of color from the unlawful/illegal wrongs complained of herein. What is disturbing, is not that it is following me, but how the government has used its resources to "blacklist" me and "network" within their own organizations and engage in such unlawful/illegal and unethical practices against me for the purposes of obstructing the administration of justice and to deprive me equal protection of the laws and due process of laws. Yes, I find our government's participation in such activities very disturbing in that when a citizen brings concerns of such injustices (without evidence) they are projected as being crazy or mentally imbalanced, etc. However, when they have the evidence to sustain their claims (as in my case), the government officials participate with others to further such civil/criminal injustices against me. I am entitled to an explanation for such actions by our government and through this instant Complaint demand such.

While I presently work in Ohio, my residence is in Kentucky. Since moving here, I have found that Kentucky is well known for its Klu Klux Klan (KKK) associations. Which I find very sad. I also have learned that the courts here operate under the "Good Boy" association – which to me excludes African-Americans and/or people of color – wherein they are known to disregard the laws in efforts of yielding special favors for one another.

Based upon the facts, evidence and legal conclusions presented in this instant Complaint the Legislature/Congress' intervention is sought to pull all matters addressed herein and/or made known to it in relation to the matters addressed herein and create the required "inferior"

court and/or committee to address the civil/criminal wrongs involving the Constitutional and Civil Rights violations addressed.

IT IS IMPORTANT TO NOTE as I have mentioned, that I am currently employed with a law firm in Ohio. Said law firm authorized one of its attorneys to assist me in the Kentucky matter; however, said attorney (white) became upset when confronted with the bad advice being provided. Moreover, it was made known to me that opposing counsel (white) reputation for corrupt practices and making Kentucky news for being a slumlord. It appears they were attempting to force me to give up my residence and a place I enjoyed rather than comply with the laws. Therefore, the attorney assigned me by the firm abandoned me and I am proceeding on. I am very disturbed by the fact that it appears that "certain" Whites feel that they have the right to determine where I want to live and if I do not agree with their unlawful/illegal demands to give up my residence, they result to civil/criminal actions TO FORCE ME OUT!

IT IS IMPORTANT TO NOTE that I have filed a civil lawsuit against the Landlord in Kentucky. See **EXHIBIT "78"** attached hereto and incorporated by reference. The record evidence will sustain that said filing was not made before diligent efforts were taken to resolve the issues addressed. **IT IS IMPORTANT TO NOTE** that the attorney representing the landlord, James West, also worked with the Judge, Gregory M. Bartlett, before Bartlett took the bench. *Do you think this was information made known to me by the court?* NO. **This information was provided to me by one of the lawyers at the law firm I am presently employed at**. Moreover, said lawyer advised me why some attorneys do not like practicing in the state of Kentucky – because of the "GOOD BOY" network in place in Kentucky. Therefore, I believe it is safe to conclude that rather than the laws being upheld in Kentucky, they are rendered as special favors to attorneys, judges friends, colleagues, etc. **IT IS IMPORTANT TO NOTE** that in said action I have successfully obtained an Injunction/Restraining Order against the Landlord; however, since obtaining same, West through the assistance of Bartlett has been trying to get it removed/lifted and attempting to unlawfully/illegally get their hands on rent money being retained in Escrow. However, the proper pleadings have been filed to preserve my rights. **IT IS IMPORTANT TO NOTE** *that I have filed the applicable pleadings requesting the recusal of Bartlett from this matter; however, he has failed to do so. He has also failed to obey the ruling of the higher court (Kentucky Court of Appeals) and refuses to enter rulings in compliance with the statutes/laws. Therefore, this matter and the unresolved issues are presently pending.*

IT IS IMPORTANT TO NOTE that the Kentucky Court of Appeals presently have before it pending actions regarding a Writ of Prohibition I have filed against Judge Bartlett. Said filing was made in compliance with the Order issued by the KY Court of Appeals. However, it now appears said court is attempting to back paddle and extend special favors against my objections. Timely pleading has been filed to notify the Court of Appeals of my intents to engage this Legislature/Congress in said matters. See **EXHIBIT "79"** attached hereto and incorporated by reference. To support the issuance of the Writ of Prohibition and the civil/criminal wrongs involving Judge Bartlett and landlord's counsel, James West, I provide a copy of the Writ of Prohibition filed with the KY Court of Appeals. Said pleading sets for the facts, evidence and legal conclusions to sustain the relief sought therein. See **EXHIBIT "80"** attached hereto and incorporated by reference.

IT IS IMPORTANT TO NOTE that I have also filed charges with the Kentucky Commission on Human Rights. To no avail. This agency has elected to circumvent the laws over my objections. A copy of the complaint filed with said agency is attached hereto at **"EXHIBIT "81"** and incorporated by reference. **IT IS IMPORTANT TO NOTE** that while there is evidence in the Commissions record to support the landlords providing of required repairs to other tenants and other tenants not being forced and/or required to move out, said landlord has failed to provide me with the same services. Therefore, I believe it may be due to the landlord and their counsel's knowledge of my engagement in protected activities as well as their knowledge of my matters pending before USDC-MS. **IT IS IMPORTANT TO NOTE** that the Commission has taken a far departure from the laws/statutes under which they are governed to deprive me equal protection f the laws and due process of laws. I believe such unlawful/illegal actions by said agency is due to its knowledge of my engagement in protected activities and merely this government agency furthering the conspiracy I have alleged.

IT IS IMPORTANT TO NOTE that in an effort to shield/mask its illegal/unlawful activities the Kentucky Commission has refused to provide me with a copy of the record. The laws clearly provide provisions for such requests; however the Commission has denied me a copy of the record. Providing me with copies of documents that I submitted; however, attempting to keep me from obtaining documentation that would expose their criminal/civil violations against me. **IT IS IMPORTANT TO NOTE** that I am attempting to file the required Writ of Mandamus action against the Kentucky Commission; however, such efforts have been met with unlawful/illegal resistance. I have filed the applicable *Motion to Compel* with the KY Court of Appeals - See **EXHIBIT "82"** attached hereto and incorporated by reference – as well as the applicable pleading to stay actions in that the Kentucky Commission is aware of my intent to bring a Writ of Mandamus action against it. The Kentucky Commission has resorted to actions clearly prohibited by laws to preclude me from obtaining a copy of the record in that it will reveal the unlawful/illegal and/or civil/criminal wrongs of its employees.

IT IS IMPORTANT TO NOTE that the KY Court of Appeals is attempting to aid the Kentucky Commission in the shielding/record without legal and/or just cause but to keep me from seeing the civil/criminal acts of the Commissions officers/employees. I have filed the Motion for Findings as well as placed the KY Court of Appeals on notice of my intention to seek the Legislature/Congress intervention. See EXHIBIT "79" attached hereto and incorporated by reference.

A. ATTORNEY

It is important to note that I retained an attorney to represent in this matter. This attorneys name was Brian Bishop. However, in keeping with the pattern-of-illegal/unlawful actions, Judge Bartlett granted a his Motion to Withdraw. Said motion which is also being contested. Bishop required a Retainer to represent me, which I paid and which to date he has not returned any unearned portion. However, this does not shield him from any investigation by the Legislature/Congress to determine whether or not such actions by him violated my Constitutional and Civil Rights and/or statutes/laws governing said matters.

THEREFORE, the Legislature/Congress' intervention in this matter is requested to aid in the protection of my Constitutional and Civil Rights.

XVIII. RELIEF SOUGHT

WHEREFORE PREMISES CONSIDERED, Vogel Denise Newsome request the following relief through this *Emergency Complaint and Request for Legislature/Congress Intervention; Also Request for Investigations, Hearings and Findings*:

1. Pursuant to **a)** Article 1 – The Legislative Branch; **b)** Article 1 § 8 – Powers of Congress,; **c)** Article 3 § 1 – Judicial powers and create the applicable tribunal (inferior court and/or committee(s)) to address the Constitutional Right and/or Civil Rights violations addressed herein. Moreover, civil/criminal wrongs rendered through said Rights and/or violations of the statutes/laws associated and/or governing said Rights; and **d**) Article 4 – The States: wherein I am requesting the Legislature/Congress intervention in any/all state matters addressed herein regarding me and/or made known to it through the filing of this instant Complaint.

2. I seek the relief sought in this instant Complaint under the United States Constitution, the Constitution of the States addressed and/or affected by said filing

3. I am requesting that due to the evidence presented in this instant Complaint that the Legislature/Congress create the required "inferior court" and/or "committee(s)" and initiate Investigations, hold Hearings and render their Findings as it relates to the Constitutional, Civil and Criminal wrongs complained in this instant Complaint.

4. I am requesting that due to the evidence presented in this instant Complaint that the Legislature/Congress create the required "inferior court" and/or "committee(s)" and initiate Investigations, hold Hearings and render their Findings as it relates to the Constitutional, Civil and Criminal wrongs complained in this instant Complaint and that the Legislature/Congress pull the following matters/cases and/or those brought to its attention regarding me through its handling of this matter which include, but is not limited to the following:

    a) United States District Court Actions:

        i) Cases in the Federal Court – USDC Southern District of Mississippi (Jackson Division) Case Nos. 3:07-cv-00099 TSL/LRA and 3:07-cv-00560 WHB/LRA – the Docket Sheet for said cases are attached hereto respectively as **EXHIBITS "83"** and **"84"** and are incorporated herein by reference.

ii) Case in the Federal Court – USDC Eastern District of Louisiana (New Orleans) Case No. 2:99-cv-03109 – See **EXHIBIT "38"** attached hereto.

b) State Court Actions (State of Kentucky):

i) Kenton County ***District*** Court Case No. 06-C-05059 – Appeal: Kenton County Circuit Court Case No. 07-XX-00001; and Kentucky Court of Appeals Case No. 2007CA001589

ii) Kenton County ***Circuit*** Court Case No. 06-CI-03270 – Appeal: Kentucky Court of Appeals Case No. 2007CA000834

c) State Agency Actions (State of Mississippi)

i) MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY ("MDES")
Decision Code No. 2400
Reporting Point No. 0480
Case No. 00002-R-05-01 and 00241-R-05-01
Hinds County Circuit Court Case No. 251-2005-163CIV

ii) OCCUPATIONAL SAFTY & HEALTH ADMINISTRATION ("OSHA")
Case No. 4-1220-04-027 and/or 4-1220-05-04 and/or all cases filed on my behalf and/or related to me

iii) EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ("EEOC"):
Case No. 131-2005-01442 and/or all cases filed on my behalf and/or related to me

iv) WAGE & HOUR DIVISION ("WHD")
Any and all Cases filed on my behalf and/or relating to me.

v) BOARD OF REVIEW – U.S. DEPARTMENT OF LABOR
Any and all Cases filed on my behalf and/or relating to me.

d) State Agency Action (State of Kentucky)

i) Kentucky Commission on Human Rights – Case Nos. KCHR 1423-H and HUD No. 04-07-0000-8

e) Hinds County Board of Supervisors

f) Federal Bureau of Investigations (FBI)

g) City of Jackson Matter – Regarding Traffic Citation (See EXHIBIT "33")

5. Any and all applicable relief allowed under the Constitution, Civil Rights Act, and statutes and laws governing the civil and criminal wrongs addressed herein.

Respectfully submitted this **14th** day of **July, 2008.**

VOGEL DENISE NEWSOME
Post Office Box 14731
Cincinnati, Ohio 45250
Phone: (601) 885-9536

CJRA-P, JURY, LRA, MEMBER

U.S. District Court
Southern District of Mississippi (Jackson)
CIVIL DOCKET FOR CASE #: 3:07-cv-00560-WHB-LRA

Newsome v. Crews et al
Assigned to: District Judge William H. Barbour, Jr
Referred to: Magistrate Judge Linda R. Anderson
Demand: $1,500,000
Lead case: 3:07-cv-00099-TSL-LRA
Member case: (View Member Case)
Cause: 42:405 Fair Housing Act

Date Filed: 09/21/2007
Jury Demand: Plaintiff
Nature of Suit: 443 Civil Rights: Accommodations
Jurisdiction: Federal Question

Plaintiff

Vogel Newsome

represented by **Wanda Abioto**
ABIOTO LAW CENTER d/b/a
WANDA ABIOTO
2353 Syon
Memphis, TN 38119
901/791-2246
Fax: 901/791-2248
Email: abioto@hotmail.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Melody Crews

represented by **Grover Clark Monroe, II**
DUNBARMONROE, P.A.
1855 Lakeland Drive, Suite P-121
Jackson, MS 39216
601/366-1805
Email: gcmonroe@dunbarmonroe.com
ATTORNEY TO BE NOTICED

Defendant

Spring Lake Apartments LLC

represented by **Lanny R. Pace**
STEEN, DALEHITE & PACE
P.O. Box 900
Jackson, MS 39205-0900
(601) 969-7054
Email: lrp@steenrd.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

EXHIBIT "84"

Defendant

The Bryan Company

represented by **Lanny R. Pace**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Dial Equities, Inc.

Date Filed	#	Docket Text
09/21/2007	1	COMPLAINT against Melody Crews, Spring Lake Apartments LLC, The Bryan Company, Dial Equities, Inc. (Filing fee $ 350 receipt number J021266), filed by Vogel Newsome. (Attachments: # 1 Civil Cover Sheet)(JKM) (Entered: 09/24/2007)
10/29/2007	2	ATTACHMENT re 1 Complaint *Exhibit II* by Vogel Newsome (Abioto, Wanda) (Entered: 10/29/2007)
10/29/2007	3	ATTACHMENT re 1 Complaint *Exhibit III* by Vogel Newsome (Abioto, Wanda) (Entered: 10/29/2007)
10/29/2007	4	ATTACHMENT re 1 Complaint *Exhibit III* by Vogel Newsome (Abioto, Wanda) (Entered: 10/29/2007)
10/29/2007	5	ATTACHMENT re 1 Complaint *Exhibit IV* by Vogel Newsome (Abioto, Wanda) (Entered: 10/29/2007)
10/29/2007	6	ATTACHMENT re 1 Complaint *Exhibit V* by Vogel Newsome (Abioto, Wanda) (Entered: 10/29/2007)
10/29/2007	7	ATTACHMENT re 1 Complaint *Exhibit VI* by Vogel Newsome (Abioto, Wanda) (Entered: 10/29/2007)
10/29/2007	8	ATTACHMENT re 1 Complaint *Exhibit VII* by Vogel Newsome (Abioto, Wanda) (Entered: 10/29/2007)
10/29/2007	9	ATTACHMENT re 1 Complaint *Exhibit VIII* by Vogel Newsome (Abioto, Wanda) (Entered: 10/29/2007)
10/29/2007	10	ATTACHMENT re 1 Complaint *Exhibit IX* by Vogel Newsome (Abioto, Wanda) (Entered: 10/29/2007)
10/29/2007	11	ATTACHMENT re 1 Complaint *Exhibit X* by Vogel Newsome (Abioto, Wanda) (Entered: 10/29/2007)
01/03/2008	12	Summons Issued as to Melody Crews, Spring Lake Apartments LLC, and Spring Lake Apartments by serving Steve H. Bryan, Registered Agent, The Bryan Company, Dial Equities, Inc.. (Summons issued and mailed to Vogel Newsome at P. O. Box 14731, Cincinnati, Ohio 45250) (lbt) (Entered: 01/04/2008)

01/31/2008	13	Corporate Disclosure Statement by Spring Lake Apartments LLC (Pace, Lanny) (Entered: 01/31/2008)
01/31/2008	14	Corporate Disclosure Statement by The Bryan Company (Pace, Lanny) (Entered: 01/31/2008)
01/31/2008	15	MOTION to Dismiss *and/or to Transfer* by Spring Lake Apartments LLC (Attachments: # 1 Exhibit 1, 2, 3)(Pace, Lanny) (Entered: 01/31/2008)
01/31/2008	16	MEMORANDUM in Support re 15 MOTION to Dismiss *and/or to Transfer* filed by Spring Lake Apartments LLC (Pace, Lanny) (Entered: 01/31/2008)
01/31/2008	17	MOTION to Dismiss *or Transfer* by The Bryan Company (Attachments: # 1 Exhibit 1, 2, 3)(Pace, Lanny) (Entered: 01/31/2008)
01/31/2008	18	MEMORANDUM in Support re 17 MOTION to Dismiss *or Transfer* filed by The Bryan Company (Pace, Lanny) (Entered: 01/31/2008)
01/31/2008	19	MEMORANDUM in Support re 15 MOTION to Dismiss *and/or to Transfer*, 17 MOTION to Dismiss *or Transfer* filed by Spring Lake Apartments LLC, The Bryan Company (Pace, Lanny) (Entered: 01/31/2008)
01/31/2008	20	MOTION for Extension of Time to File Answer re 1 Complaint by Melody Crews (Monroe, Grover) (Entered: 01/31/2008)
02/01/2008		TEXT ONLY ORDER granting 20 Motion for Extension of Time to Answer re 1 Complaint. Melody Crews answer due 2/20/2008. Signed by Magistrate Judge Linda R. Anderson on February 1, 2008. NO FURTHER WRITTEN ORDER SHALL BE ISSUED. (WG) (Entered: 02/01/2008)
02/01/2008	21	SUMMONS Returned Executed by Vogel Newsome Melody Crews served on 1/11/2008, answer due 1/31/2008. (JKM) (Entered: 02/04/2008)
02/01/2008	22	SUMMONS Returned Executed by Vogel Newsome The Bryan Company served on 1/15/2008, answer due 2/4/2008. (JKM) (Entered: 02/04/2008)
02/01/2008	23	SUMMONS Returned Executed by Vogel Newsome Spring Lake Apartments LLC served on 1/15/2008, answer due 2/4/2008. (JKM) (Entered: 02/04/2008)
02/01/2008	24	SUMMONS Returned Executed by Vogel Newsome Spring Lake Apartments LLC served on 1/11/2008, answer due 1/31/2008. (JKM) (Entered: 02/04/2008)
02/15/2008	25	RESPONSE in Opposition re 20 MOTION for Extension of Time to File Answer to 1 Complaint filed by Vogel Newsome. (RRL) (Entered: 02/15/2008)
02/15/2008	26	NOTICE OF INTENT TO FILE Motion for Fees/Costs by Vogel Newsome. (RRL) (Entered: 02/15/2008)
02/15/2008	27	NOTICE of Non-Consent to Magistrate Judge by Vogel Newsome. (RRL) (Entered: 02/15/2008)
02/15/2008	28	NOTICE of Intent to File Disqualification Action Against Magistrate Judge Linda R. Anderson by Vogel Newsome. (RRL) (Entered: 02/15/2008)
02/15/2008	29	MOTION to Strike 15 MOTION to Dismiss and/or to Transfer 17 MOTION to Dismiss or Transfer by Vogel Newsome (Attachments: # 1 Exhibits, # 2 Cover

		Letter)(RRL) (Entered: 02/15/2008)
02/15/2008	30	MEMORANDUM in Support re 29 MOTION to Strike filed by Vogel Newsome. (RRL) (Entered: 02/15/2008)
02/19/2008	31	*Defenses and* ANSWER to 1 Complaint by Melody Crews.(Monroe, Grover) (Entered: 02/19/2008)
02/20/2008	32	*Amended Defenses and* ANSWER to 1 Complaint by Melody Crews.(Monroe, Grover) (Entered: 02/20/2008)
02/21/2008	33	RESPONSE to Motion re 29 MOTION to Strike 15 MOTION to Dismiss *and/or to Transfer*, 17 MOTION to Dismiss *or Transfer* filed by Spring Lake Apartments LLC, The Bryan Company (Pace, Lanny) (Entered: 02/21/2008)
02/25/2008	34	MOTION *for General Relief and*, MOTION for Order to Show Cause *and for Hearing* by Melody Crews (Attachments: # 1 Exhibit A, # 2 Exhibit B) (Monroe, Grover) (Entered: 02/25/2008)
02/28/2008	35	Joinder by Spring Lake Apartments LLC, The Bryan Company to 34 MOTION *for General Relief and* MOTION for Order to Show Cause *and for Hearing* filed by Melody Crews (Pace, Lanny) (Entered: 02/28/2008)
03/04/2008	36	MOTION to Strike 31 Answer to Complaint, 32 Answer to Complaint by Melody Crews (JKM) (Entered: 03/04/2008)
03/04/2008	37	MEMORANDUM in Support re 36 MOTION to Strike 31 Answer to Complaint, 32 Answer to Complaint filed by Vogel Newsome (JKM) (Entered: 03/04/2008)
03/06/2008	38	MOTION to Strike 32 Answer to Complaint by Melody Crews (JKM) (Entered: 03/06/2008)
03/13/2008	39	MOTION for Extension of Time to File Response/Reply *to Plaintiff's Motion to Strike Crew's Answer* by Melody Crews (Monroe, Grover) (Entered: 03/13/2008)
03/13/2008	40	ORDER CONSOLIDATING CASES 3:07CV560 AND 3:07CV99 ARE CONSOLIDATED. IT IS FURTHER ORDERED THAT ALL PLEADINGS WILL BE FILED IN LEAD CASE CIVIL ACTION 3:07cv99. Signed by District Judge William H. Barbour, Jr on 3/13/08 (JKM) (Entered: 03/13/2008)
03/19/2008	41	MOTION to Withdraw *as Counsel of Record by Wanda Abioto* by Vogel Newsome (Abioto, Wanda) (Entered: 03/19/2008)
03/25/2008	42	Response in Opposition re 40 ORDER CONSOLIDATING CASES 3:07CV560 AND 3:07CV99 ARE CONSOLIDATED. IT IS FURTHER ORDERED THAT ALL PLEADINGS WILL BE FILED IN LEAD CASE CIVIL ACTION 3:07cv99. Signed by District Judge William H. Barbour, Jr on 3/13/08 (JKM) filed by Vogel Newsome (JKM) (Entered: 03/25/2008)
06/09/2008	43	OPINION AND ORDER re 42 Response in Opposition, filed by Vogel Newsome. Plaintiff's Motion to Amend [Docket No. 42] is hereby denied. The Clerk of Court is directed to file a copy of this Opinion and Order in both of the abovereferenced lawsuits. No further pleading shall be filed in this case, unless

		authorized by the Court. Signed by District Judge William H. Barbour, Jr on 6-9-08 (Lewis, Nijah) (Entered: 06/09/2008)

CJRA-SU, JURY, LEAD, LRA

U.S. District Court
Southern District of Mississippi (Jackson)
CIVIL DOCKET FOR CASE #: 3:07-cv-00099-TSL-LRA

Newsome v. Crews et al
Assigned to: District Judge Tom S. Lee
Referred to: Magistrate Judge Linda R. Anderson
Demand: $53,000,000
Member case: (View Member Case)
Cause: 28:1331 Fed. Question: Personal Injury

Date Filed: 02/14/2007
Jury Demand: Plaintiff
Nature of Suit: 360 P.I.: Other
Jurisdiction: Diversity

Plaintiff

Vogel Newsome

represented by **Vogel Newsome**
P. O. Box 14731
Cincinnati, OH 45250
601/885-9536 513/680-2922
PRO SE

V.

Defendant

Melody Crews

represented by **Grover Clark Monroe, II**
DUNBARMONROE, P.A.
1855 Lakeland Drive, Suite P-121
Jackson, MS 39216
601/366-1805
Email: gcmonroe@dunbarmonroe.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Benny McCalip May
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601/366-1805
Email: mmay@dunbarmonroe.com
ATTORNEY TO BE NOTICED

Defendant

Spring Lake Apartments LLC

represented by **Lanny R. Pace**
STEEN, DALEHITE & PACE
P.O. Box 900
Jackson, MS 39205-0900
(601) 969-7054

EXHIBIT "83"

Email: lrp@steenrd.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Dial Equities, Inc.

represented by **Grover Clark Monroe, II**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Benny McCalip May
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Jon C. Lewis
individually and in his capacity as Constable of Hinds County

represented by **Clifford Allen McDaniel, II**
PAGE, KRUGER & HOLLAND, P.A.
P. O. Box 1163
Jackson, MS 39215-1163
601/420-0333
Email: amcdaniel@pagekruger.com
ATTORNEY TO BE NOTICED

Defendant

William L. Skinner, II
individually and in his capacity as Justice Court Judge

represented by **Clifford Allen McDaniel, II**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Malcom McMillan
individually and in his capacity as Sheriff of Hinds County

represented by **J. Lawson Hester**
PAGE, KRUGER & HOLLAND, P.A.
P. O. Box 1163
Jackson, MS 39215-1163
601/420-0333
Fax: 601/420-0033
Email: lhester@pagekruger.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Clifford Allen McDaniel, II
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

John Does
1-26 individually and in their official capacity

Defendant

Hinds County, Mississippi

represented by **J. Lawson Hester**

(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Clifford Allen McDaniel, II
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Jane Does
1-26 individually and in their official capacity

Date Filed	#	Docket Text
02/14/2007	1	COMPLAINT against Melody Crews, Spring Lake Apartments LLC, Dial Equities, Inc., Jon C. Lewis, William L. Skinner, II, Malcom McMillan (Filing fee $ 350 receipt number 17645.) (attachments maintained in court file), filed by Vogel Newsome. (Attachments: # 1 Civil Cover Sheet # 2 exhibits# 3 exhibits)(THR,) (Entered: 02/23/2007)
04/04/2007	2	Change of Address filed by Vogel Newsome, Post Office Box 14731, Cincinnati, Ohio 45250. (Moore, Janet) (Entered: 04/05/2007)
05/01/2007	3	Summons Issued as to Hinds County, Mississippi, Jane Does, Melody Crews, Dial Equities, Inc., Jon C. Lewis, Malcom McMillan, John Does. (Moore, Janet) (Entered: 05/02/2007)
06/06/2007	4	MOTION for Extension of Time to Serve Summons by Vogel Newsome (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Exhibit C# 4 Exhibit E# 5 Exhibit F# 6 Exhibit G# 7 Exhibit H# 8 Exhibit I)(JKM) (Entered: 06/06/2007)
06/06/2007	5	MEMORANDUM in Support re 4 MOTION for Extension of Time to File filed by Vogel Newsome (JKM) (Entered: 06/06/2007)
06/12/2007	6	ORDER granting 4 Motion for Extension of Time to File. Plaintiff given until 9/14/07 to effect service. Signed by Judge James C. Sumner on 6/11/07 (YWJ,) (Entered: 06/12/2007)
07/12/2007	7	MOTION to Dismiss *or Alternatively for Summary Judgment* by Spring Lake Apartments LLC (Attachments: # 1 Exhibit List# 2 Exhibit Part 1# 3 Exhibit Part 2# 4 Exhibit part 3# 5 Exhibit part 4# 6 Exhibit part 5# 7 Exhibit part 6# 8 Exhibit part 7# 9 Exhibit part 8# 10 Exhibit part 9# 11 Exhibit part 10# 12 Exhibit part 11# 13 Exhibit part 12# 14 Exhibit part 13# 15 Exhibit part 14# 16 Exhibit part 15# 17 Exhibit part 16# 18 Exhibit part 17# 19 Exhibit part 18# 20 Exhibit part 19# 21 Exhibit part 20# 22 Exhibit part 21# 23 Exhibit part 22)(Pace, Lanny) (Entered: 07/12/2007)
07/12/2007	8	MEMORANDUM in Support re 7 MOTION to Dismiss *or Alternatively for Summary Judgment* filed by Spring Lake Apartments LLC (Pace, Lanny) (Entered: 07/12/2007)

07/13/2007	9	MOTION for Bond by Hinds County, Mississippi, Malcom McMillan (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Exhibit C# 4 Exhibit D# 5 Exhibit E# 6 Exhibit F)(McDaniel, Clifford) (Entered: 07/13/2007)
07/13/2007	10	MOTION to Stay by Hinds County, Mississippi, Malcom McMillan (McDaniel, Clifford) (Entered: 07/13/2007)
07/16/2007	11	MOTION to Dismiss *or in the alternative, Motion to Quash* by William L. Skinner, II (Attachments: # 1 Exhibit A)(McDaniel, Clifford) (Entered: 07/16/2007)
07/16/2007	12	ANSWER to Complaint by Hinds County, Mississippi, Malcom McMillan. (McDaniel, Clifford) (Entered: 07/16/2007)
07/16/2007	13	MOTION to Dismiss by Jon C. Lewis (McDaniel, Clifford) (Entered: 07/16/2007)
07/17/2007	14	NOTICE of Appearance by J. Lawson Hester on behalf of Hinds County, Mississippi, Malcom McMillan (Hester, J.) (Entered: 07/17/2007)
07/17/2007	15	ATTACHMENT re 11 MOTION to Dismiss *or in the alternative, Motion to Quash* by William L. Skinner, II (McDaniel, Clifford) (Entered: 07/17/2007)
07/17/2007	16	Amended MOTION to Dismiss *or in the alternative Motion to Quash* by Jon C. Lewis (Attachments: # 1 Exhibit A# 2 Exhibit B)(McDaniel, Clifford) (Entered: 07/17/2007)
07/20/2007	17	NOTICE of Appearance by Grover Clark Monroe, II on behalf of Melody Crews, Dial Equities, Inc. (Monroe, Grover) (Entered: 07/20/2007)
07/20/2007	18	NOTICE of Appearance by Benny McCalip May on behalf of Melody Crews, Dial Equities, Inc. (May, Benny) (Entered: 07/20/2007)
07/26/2007	19	MOTION for Extension of Time to File Answer re 1 Complaint, by Melody Crews, Dial Equities, Inc. (May, Benny) (Entered: 07/26/2007)
07/27/2007		Text Only ORDER granting 19 Motion for Extension of Time to Answer. Melody Crews answer due 8/15/2007; Dial Equities, Inc. answer due 8/15/2007. NO WRITTEN ORDER WILL ISSUE. Signed by Judge James C. Sumner on July 27, 2007 (CSF) (Entered: 07/27/2007)
07/27/2007	20	Joinder by Spring Lake Apartments LLC to 9 MOTION for Bond filed by Malcom McMillan, Hinds County, Mississippi (Pace, Lanny) (Entered: 07/27/2007)
07/27/2007	21	Joinder by Spring Lake Apartments LLC to 10 MOTION to Stay filed by Malcom McMillan, Hinds County, Mississippi (Pace, Lanny) (Entered: 07/27/2007)
08/01/2007	22	MOTION for Joinder *in Motion for Stay of Proceedings* by Melody Crews, Dial Equities, Inc. (Monroe, Grover) (Entered: 08/01/2007)
08/01/2007	23	MOTION for Joinder *in Motion for Security of Costs and Separate Motion for Security of Attorney Fees* by Melody Crews, Dial Equities, Inc. (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit)(Monroe, Grover) (Entered: 08/01/2007)

08/02/2007		DOCKET ANNOTATION as to #23 Attorney to refile as 2 separate pleadings. Motion for Joiner and Motion for Security of Attorney Fees. (JKM) (Entered: 08/02/2007)
08/02/2007	24	MOTION for Attorney Fees *(Security of)* by Melody Crews, Dial Equities, Inc. (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit)(Monroe, Grover) (Entered: 08/02/2007)
08/06/2007	25	MOTION to Strike 10 MOTION to Stay, 9 MOTION for Bond by Vogel Newsome (JKM) (Entered: 08/08/2007)
08/06/2007	26	MEMORANDUM in Support re 25 MOTION to Strike 10 MOTION to Stay, 9 MOTION for Bond filed by Vogel Newsome (JKM) (Entered: 08/08/2007)
08/06/2007	27	MOTION to Strike 7 MOTION to Dismiss *or Alternatively for Summary Judgment* by Vogel Newsome (JKM) (Entered: 08/08/2007)
08/06/2007	28	MOTION to Strike 23 MOTION for Joinder *in Motion for Security of Costs and Separate Motion for Security of Attorney Fees*, 22 MOTION for Joinder *in Motion for Stay of Proceedings* by Vogel Newsome (JKM) (Entered: 08/08/2007)
08/06/2007	29	RESPONSE in Opposition re 19 MOTION for Extension of Time to File Answer re 1 Complaint, filed by Vogel Newsome (JKM) (Entered: 08/08/2007)
08/06/2007	31	MOTION to Strike 11 MOTION to Dismiss *or in the alternative, Motion to Quash*, 13 MOTION to Dismiss by Vogel Newsome (JKM) (Entered: 08/08/2007)
08/06/2007	32	MEMORANDUM in Support re 31 MOTION to Strike 11 MOTION to Dismiss *or in the alternative, Motion to Quash*, 13 MOTION to Dismiss filed by Vogel Newsome (JKM) (Entered: 08/08/2007)
08/06/2007	33	MEMORANDUM in Support re 28 MOTION to Strike 23 MOTION for Joinder *in Motion for Security of Costs and Separate Motion for Security of Attorney Fees*, 22 MOTION for Joinder *in Motion for Stay of Proceedings* filed by Vogel Newsome (Attachments: # 1 Exhibit 1# 2 Exhibit 2# 3 Exhibit 3# 4 Exhibit 4# 5 Exhibit 5)(JKM) (Entered: 08/08/2007)
08/06/2007	34	SUMMONS Returned Executed by Vogel Newsome. Melody Crews served on 7/8/2007, answer due 7/28/2007. (JKM) (Entered: 08/08/2007)
08/06/2007	35	SUMMONS Returned Executed by Vogel Newsome. Spring Lake Apartments LLC served on 6/22/2007, answer due 7/12/2007. (JKM) (Entered: 08/08/2007)
08/06/2007	36	SUMMONS Returned Executed by Vogel Newsome. Jon C. Lewis served on 6/21/2007, answer due 7/11/2007. (JKM) (Entered: 08/08/2007)
08/06/2007	37	SUMMONS Returned Executed by Vogel Newsome. William L. Skinner, II served on 6/21/2007, answer due 7/11/2007. (JKM) (Entered: 08/08/2007)
08/06/2007	38	SUMMONS Returned Executed by Vogel Newsome. Malcom McMillan served on 6/23/2007, answer due 7/13/2007. (JKM) (Entered: 08/08/2007)

08/06/2007	39	SUMMONS Returned Executed by Vogel Newsome. Hinds County, Mississippi served on 6/25/2007, answer due 7/15/2007. (JKM) (Entered: 08/08/2007)
08/08/2007	30	ATTACHMENT re 24 MOTION for Attorney Fees *(Security of) Supplemental Evidence in Support of Motion for Security of Attorney Fees* by Melody Crews, Dial Equities, Inc. (Attachments: # 1 Exhibit)(Monroe, Grover) (Entered: 08/08/2007)
08/09/2007	40	Second MOTION for Extension of Time to File Answer by Melody Crews, Dial Equities, Inc. (May, Benny) (Entered: 08/09/2007)
08/13/2007	41	ORDER denying 28 Motion to Strike ; granting 40 Motion for Extension of Time to Answer ; granting 9 Motion for Bond; granting 10 Motion to Stay; granting 22 Motion for Joinder; granting 23 Motion for Joinder; denying 24 Motion for Attorney Fees; denying 25 Motion to Strike. Case is stayed until Plaintiff posts bond required by Order. Answer for Crews and Dial Equities due fifteen days after Plaintiff posts bond required by Order. Signed by Judge James C. Sumner on 8/13/07 (YWJ,) (Entered: 08/13/2007)
08/16/2007	42	MOTION to Strike by Vogel Newsome (JKM) (Entered: 08/16/2007)
08/17/2007		TEXT ONLY ORDER finding as moot 42 Motion to Strike Signed by Judge James C. Sumner on August 17, 2007. NO FURTHER WRITTEN ORDER TO ENTER. (DCL,) (Entered: 08/17/2007)
08/22/2007	43	Summons Returned Unexecuted by Vogel Newsome as to Dial Equities, Inc.. (JKM) (Entered: 08/23/2007)
08/22/2007	44	NOTICE OF FILING TO OJECTIONS TO ORDER by Vogel Newsome re 41 Order on Motion to Strike, Order on Motion for Extension of Time to Answer, Order on Motion for Bond, Order on Motion to Stay, Order on Motion for Joinder,Order on Motion for Attorney Fees. (JKM) Modified on 8/24/2007 (JKM). (Entered: 08/23/2007)
08/22/2007	45	Response in Opposition re 40 Second MOTION for Extension of Time to File Answer by Melody Crews, Dial Equities, Inc. (May, Benny) filed by Vogel Newsome (JKM) (Entered: 08/23/2007)
08/22/2007	46	Response in Opposition re 41 ORDER denying 28 Motion to Strike ; granting 40 Motion for Extension of Time to Answer ; granting 9 Motion for Bond; granting 10 Motion to Stay; granting 22 Motion for Joinder; granting 23 Motion for Joinder; denying 24 Motion for Attorney Fees; denying 25 Motion to Strike. Case is stayed until Plaintiff posts bond required by Order. Answer for Crews and Dial Equities due fifteen days after Plaintiff posts bond required by Order. Signed by Judge James C. Sumner on 8/13/07 (YWJ,) filed by Vogel Newsome (Attachments: # 1 Exhibit Part Two)(JKM) (Entered: 08/23/2007)
08/27/2007	47	MOTION to Strike 31 MOTION to Strike 11 MOTION to Dismiss *or in the alternative, Motion to Quash*, 13 MOTION to Dismiss, 46 Response in Opposition,, 32 Memorandum in Support of Motion, 29 Response in Opposition to Motion, 33 Memorandum in Support of Motion, 45 Response in

		Opposition, 26 Memorandum in Support of Motion by Hinds County, Mississippi, Malcom McMillan (McDaniel, Clifford) (Entered: 08/27/2007)
08/28/2007	48	MOTION for Joinder *in Motion to Strike* by Melody Crews, Dial Equities, Inc. (Monroe, Grover) (Entered: 08/28/2007)
08/28/2007	49	Joinder by Spring Lake Apartments LLC to 47 MOTION to Strike 31 MOTION to Strike 11 MOTION to Dismiss *or in the alternative, Motion to Quash*, 13 MOTION to Dismiss, 46 Response in Opposition,, 32 Memorandum in Support of Motion, 29 Response in Opposition to Motion, 33 Memor MOTION to Strike 31 MOTION to Strike 11 MOTION to Dismiss *or in the alternative, Motion to Quash*, 13 MOTION to Dismiss, 46 Response in Opposition,, 32 Memorandum in Support of Motion, 29 Response in Opposition to Motion, 33 Memor filed by Malcom McMillan, Hinds County, Mississippi (Pace, Lanny) (Entered: 08/28/2007)
08/30/2007	50	MOTION to Strike 48 MOTION for Joinder *in Motion to Strike* by Vogel Newsome (JKM) (Entered: 08/30/2007)
08/30/2007	51	RESPONSE to Motion re 46 Response in Opposition,, filed by Hinds County, Mississippi, Malcom McMillan (McDaniel, Clifford) (Entered: 08/30/2007)
08/31/2007	52	MOTION to Strike *Plaintiff's Motion to Strike at Docket Entry 50* by Melody Crews, Dial Equities, Inc. (Monroe, Grover) (Entered: 08/31/2007)
09/04/2007	53	Joinder by Spring Lake Apartments LLC to 51 Response to Motion filed by Malcom McMillan, Hinds County, Mississippi (Pace, Lanny) (Entered: 09/04/2007)
09/05/2007	54	ORDER OF RECUSAL. Judge James C. Sumner recused. Case reassigned to Judge Linda R. Anderson for all further proceedings Signed by Judge James C. Sumner on September 5, 2007 (CSF) (Entered: 09/05/2007)
09/10/2007	55	Corporate Disclosure Statement by Melody Crews, Dial Equities, Inc. (Monroe, Grover) (Entered: 09/10/2007)
09/10/2007	56	MOTION for Protective Order *and to File Under Seal Part of the Rule 7.1 Disclosure Statement* by Melody Crews, Dial Equities, Inc. (Monroe, Grover) (Entered: 09/10/2007)
09/11/2007	57	RESPONSE to Motion re 47 MOTION to Strike 31 MOTION to Strike 11 MOTION to Dismiss *or in the alternative, Motion to Quash*, 13 MOTION to Dismiss, 46 Response in Opposition,, 32 Memorandum in Support of Motion, 29 Response in Opposition to Motion, 33 Memor MOTION to Strike 31 MOTION to Strike 11 MOTION to Dismiss *or in the alternative, Motion to Quash*, 13 MOTION to Dismiss, 46 Response in Opposition,, 32 Memorandum in Support of Motion, 29 Response in Opposition to Motion, 33 Memor filed by Vogel Newsome (JKM) (Entered: 09/11/2007)
09/11/2007	58	RESPONSE to Motion re 48 MOTION for Joinder *in Motion to Strike* filed by Vogel Newsome (JKM) (Entered: 09/11/2007)
09/11/2007	59	RESPONSE to Motion re 49 Joinder filed by Vogel Newsome (JKM) (Entered: 09/11/2007)

09/20/2007	60	REPLY to Response to Motion re 57 Response to Motion,, filed by Hinds County, Mississippi, Malcom McMillan (McDaniel, Clifford) (Entered: 09/20/2007)
09/20/2007	61	Response in Opposition re 51 RESPONSE to Motion re 46 Response in Opposition, filed by Hinds County, Mississippi, Malcom McMillan (McDaniel, Clifford) filed by Vogel Newsome (JKM) Modified on 9/25/2007 (JKM). (Entered: 09/21/2007)
09/20/2007	62	MOTION for Extension of Time to File Response to Defendant Dial Equties, Inc. Motion for Protective Order and to file under seal part of the Rule 7.1 Disclosure Statement by Vogel Newsome (JKM) (Entered: 09/21/2007)
09/21/2007	63	RESPONSE to Motion re 62 MOTION for Extension of Time to File *and to Respond to Defendants' Motion for Protective Order and to File Under Seal Part of the Rule 7.1 Disclosure Statement* filed by Melody Crews, Dial Equities, Inc. (Monroe, Grover) (Entered: 09/21/2007)
09/21/2007	64	ATTACHMENT re 63 Response to Motion, *Exhibit A* by Melody Crews, Dial Equities, Inc. (Monroe, Grover) (Entered: 09/21/2007)
09/21/2007	65	ATTACHMENT re 63 Response to Motion, *Exhibit B* by Melody Crews, Dial Equities, Inc. (Monroe, Grover) (Entered: 09/21/2007)
09/26/2007	66	MOTION to Dismiss by Hinds County, Mississippi, Malcom McMillan (McDaniel, Clifford) (Entered: 09/26/2007)
09/28/2007	67	ORDER REFERRING MOTION: 11 MOTION to Dismiss *or in the alternative, Motion to Quash* filed by William L. Skinner, II, 52 MOTION to Strike *Plaintiff's Motion to Strike at Docket Entry 50* filed by Dial Equities, Inc., Melody Crews, 62 MOTION for Extension of Time to File filed by Vogel Newsome, 31 MOTION to Strike 11 MOTION to Dismiss *or in the alternative, Motion to Quash*, 13 MOTION to Dismiss filed by Vogel Newsome, 50 MOTION to Strike 48 MOTION for Joinder *in Motion to Strike* filed by Vogel Newsome, 66 MOTION to Dismiss filed by Malcom McMillan, Hinds County, Mississippi, 16 Amended MOTION to Dismiss *or in the alternative Motion to Quash* filed by Jon C. Lewis, 56 MOTION for Protective Order *and to File Under Seal Part of the Rule 7.1 Disclosure Statement* filed by Dial Equities, Inc., Melody Crews, 47 MOTION to Strike 31 MOTION to Strike 11 MOTION to Dismiss *or in the alternative, Motion to Quash*, 13 MOTION to Dismiss, 46 Response in Opposition,, 32 Memorandum in Support of Motion, 29 Response in Opposition to Motion, 33 Memor MOTION to Strike 31 MOTION to Strike 11 MOTION to Dismiss *or in the alternative, Motion to Quash*, 13 MOTION to Dismiss, 46 Response in Opposition,, 32 Memorandum in Support of Motion, 29 Response in Opposition to Motion, 33 Memor filed by Malcom McMillan, Hinds County, Mississippi, 13 MOTION to Dismiss filed by Jon C. Lewis, 7 MOTION to Dismiss *or Alternatively for Summary Judgment* filed by Spring Lake Apartments LLC, 27 MOTION to Strike 7 MOTION to Dismiss *or Alternatively for Summary Judgment* filed by Vogel Newsome Signed by Judge Tom S. Lee on 9/28/07 (LWE) (Entered: 09/28/2007)
10/01/2007	68	MOTION for Joinder *to Dismiss* by Melody Crews, Dial Equities, Inc. (May,

		Benny) (Entered: 10/01/2007)
10/02/2007	69	Response in Opposition re 56 MOTION for Protective Order *and to File Under Seal Part of the Rule 7.1 Disclosure Statement* by Melody Crews, Dial Equities, Inc. (Monroe, Grover) filed by Vogel Newsome (JKM) (Entered: 10/02/2007)
10/03/2007	70	RESPONSE to Motion re 27 MOTION to Strike 7 MOTION to Dismiss *or Alternatively for Summary Judgment* filed by Spring Lake Apartments LLC (Pace, Lanny) (Entered: 10/03/2007)
10/03/2007	71	Corporate Disclosure Statement by Spring Lake Apartments LLC (Pace, Lanny) (Entered: 10/03/2007)
10/03/2007	72	REPLY to Response to Motion re 69 Response in Opposition *to Plaintiff's Objections to Dial Equities Motion for Protective Order and to File Under Seal Part of the Rule 7.1 Disclosure Statement* filed by Melody Crews, Dial Equities, Inc. (Monroe, Grover) (Entered: 10/03/2007)
10/09/2007	73	ORDER granting 62 Motion for Extension of Time to Respond to 56 Motion for Protective Order. Extension granted until October 23, 2007. Signed by Judge Linda R. Anderson on 10/9/07 (CC) (Entered: 10/09/2007)
10/10/2007	74	Response to Order re 67 ORDER REFERRING MOTION: 11 MOTION to Dismiss *or in the alternative, Motion to Quash* filed by William L. Skinner, II, 52 MOTION to Strike *Plaintiff's Motion to Strike at Docket Entry 50* filed by Dial Equities, Inc., Melody Crews, 62 MOTION for Extension of Time to File filed by Vogel Newsome, 31 MOTION to Strike 11 MOTION to Dismiss *or in the alternative, Motion to Quash*, 13 MOTION to Dismiss filed by Vogel Newsome, 50 MOTION to Strike 48 MOTION for Joinder *in Motion to Strike* filed by Vogel Newsome, 66 MOTION to Dismiss filed by Malcom McMillan, Hinds County, Mississippi, 16 Amended MOTION to Dismiss *or in the alternative Motion to Quash* filed by Jon C. Lewis, 56 MOTION for Protective Order *and to File Under Seal Part of the Rule 7.1 Disclosure Statement* filed by Dial Equities, Inc., Melody Crews, 47 MOTION to Strike 31 MOTION to Strike 11 MOTION to Dismiss *or in the alternative, Motion to Quash*, 13 MOTION to Dismiss, 46 Response in Opposition,, 32 Memorandum in Support of Motion, 29 Response in Opposition to Motion, 33 Memor MOTION to Strike 31 MOTION to Strike 11 MOTION to Dismiss *or in the alternative, Motion to Quash*, 13 MOTION to Dismiss, 46 Response in Opposition,, 32 Memorandum in Support of Motion, 29 Response in Opposition to Motion, 33 Memor filed by Malcom McMillan, Hinds County, Mississippi, 13 MOTION to Dismiss filed by Jon C. Lewis, 7 MOTION to Dismiss *or Alternatively for Summary Judgment* filed by Spring Lake Apartments LLC, 27 MOTION to Strike 7 MOTION to Dismiss *or Alternatively for Summary Judgment* filed by Vogel Newsome Signed by Judge Tom S. Lee on 9/28/07 (LWE) filed by Vogel Newsome (JKM) (Entered: 10/10/2007)
10/10/2007	75	MOTION to Strike 74 Response to Order,,,,,,, by Hinds County, Mississippi, Malcom McMillan (McDaniel, Clifford) (Entered: 10/10/2007)
10/15/2007	76	RESPONSE to Motion re 66 MOTION to Dismiss filed by Vogel Newsome

		(THR) (Entered: 10/15/2007)
10/15/2007	77	RESPONSE to Motion re 66 MOTION to Dismiss filed by Vogel Newsome (Attachments: # 1 Exhibit)(THR) (Entered: 10/16/2007)
10/16/2007		DOCKET ANNOTATION as to #76. Inadvertently entered. #74 is the correct filing. (JKM) (Entered: 10/16/2007)
10/16/2007	78	MOTION to Strike 77 Response to Motion by Hinds County, Mississippi, Malcom McMillan (McDaniel, Clifford) (Entered: 10/16/2007)
10/16/2007	79	REPLY to Response to Motion re 70 Response to Motion filed by Vogel Newsome (JKM) (Entered: 10/16/2007)
10/16/2007	80	RESPONSE to Motion re 72 Reply to Response to Motion, filed by Vogel Newsome (JKM) (Entered: 10/16/2007)
10/16/2007	81	RESPONSE to Motion re 68 MOTION for Joinder *to Dismiss* filed by Vogel Newsome (JKM) (Entered: 10/16/2007)
10/23/2007	82	RESPONSE to Motion re 78 MOTION to Strike 77 Response to Motion filed by Vogel Newsome (Attachments: # 1 Exhibit One# 2 Exhibit Two# 3 Exhibit Three)(JKM) (Entered: 10/23/2007)
10/24/2007	83	REPLY to Response to Motion re 82 Response to Motion filed by Hinds County, Mississippi, Malcom McMillan (McDaniel, Clifford) (Entered: 10/24/2007)
10/25/2007	84	Response to Order re 73 ORDER granting 62 Motion for Extension of Time to Respond to 56 Motion for Protective Order. Extension granted until October 23, 2007. Signed by Judge Linda R. Anderson on 10/9/07 (CC) filed by Vogel Newsome (JKM) (Entered: 10/25/2007)
10/25/2007	85	RESPONSE to Motion re 78 MOTION to Strike 77 Response to Motion filed by Vogel Newsome (JKM) (Entered: 10/25/2007)
10/25/2007	86	REPLY to Response to Motion re 85 Response to Motion filed by Hinds County, Mississippi, Malcom McMillan (McDaniel, Clifford) (Entered: 10/25/2007)
10/29/2007		TEXT ONLY ORDER Setting Hearing on Motion 78 MOTION to Strike 77 Response to Motion, 52 MOTION to Strike Plaintiff's Motion to Strike at Docket Entry 50>, 66 MOTION to Dismiss, 16 Amended MOTION to Dismiss or in the alternative Motion to Quash, 27 MOTION to Strike 7 MOTION to Dismiss or Alternatively for Summary Judgment, 50 MOTION to Strike 48 MOTION for Joinder in Motion to Strike 13 MOTION to Dismiss, 75 MOTION to Strike 74 Response to Order, 7 MOTION to Dismiss or Alternatively for Summary Judgment, 11 MOTION to Dismiss or in the alternative, Motion to Quash, 31 MOTION to Strike 11 MOTION to Dismiss or in the alternative, Motion to Quash, 13 MOTION to Dismiss, 56 MOTION for Protective Order and to File Under Seal Part of the Rule 7.1 Disclosure Statemen>, 68 MOTION for Joinder to Dismiss 47 MOTION to Strike 31 MOTION to Strike 11 MOTION to Dismiss or in the alternative, Motion to Quash 13 MOTION to Dismiss, 46 Response in Opposition, 29 Response in

		Opposition to Motion, 33 MOTION to Strike 31 MOTION to Strike 11 MOTION to Dismiss or in the alternative, Motion to Quash 13 MOTION to Dismiss, 46 Response in Opposition,, 32 Memorandum in Support of Motion, 29 Response in Opposition to Motion, 33 Memor : Motion Hearing set for 11/13/2007 at 11:00 AM with Magistrate Judge Linda R. Anderson via telephone conference. Telephone number for conference: 601-965-4528. Plaintiff shall be responsible for initiating the conference call with all counsel and the Court unless otherwise agreed to by all parties. Signed by Judge Linda R. Anderson on October 29, 2007. NO FURTHER WRITTEN ORDER SHALL BE ISSUED. (WG) (Entered: 10/29/2007)
11/05/2007	87	Response to Order - Plaintiff's Objections to re TEXT ONLY ORDER Setting Hearing on Motion 78 MOTION to Strike 77 Response to Motion, 52 MOTION to Strike Plaintiff's Motion to Strike at Docket Entry 50>, 66 MOTION to Dismiss, 16 Amended MOTION to Dismiss or in the alternative Motion to Quash, 27 MOTION to Strike 7 MOTION to Dismiss or Alternatively for Summary Judgment, 50 MOTION to Strike 48 MOTION for Joinder in Motion to Strike 13 MOTION to Dismiss, 75 MOTION to Strike 74 Response to Order, 7 MOTION to Dismiss or Alternatively for Summary Judgment, 11 MOTION to Dismiss or in the alternative, Motion to Quash, 31 MOTION to Strike 11 MOTION to Dismiss or in the alternative, Motion to Quash, 13 MOTION to Dismiss, 56 MOTION for Protective Order and to File Under Seal Part of the Rule 7.1 Disclosure Statemen>, 68 MOTION for Joinder to Dismiss 47 MOTION to Strike 31 MOTION to Strike 11 MOTION to Dismiss or in the alternative, Motion to Quash 13 MOTION to Dismiss, 46 Response in Opposition, 29 Response in Opposition to Motion, 33 MOTION to Strike 31 MOTION to Strike 11 MOTION to Dismiss or in the alternative, Motion to Quash 13 MOTION to Dismiss, 46 Response in Opposition,, 32 Memorandum in Support of Motion, 29 Response in Opposition to Motion, 33 Memor : Motion Hearing set for 11/13/2007 at 11:00 AM with Magistrate Judge Linda R. Anderson via telephone conference. Telephone number for conference: 601-965-4528. Plaintiff shall be responsible for initiating the conference call with all counsel and the Court unless otherwise agreed to by all parties. Signed by Judge Linda R. Anderson on October 29, 2007. NO FURTHER WRITTEN ORDER SHALL BE ISSUED. (WG) filed by Vogel Newsome (JKM) Additional attachment(s) added on 11/6/2007 (JKM). (Entered: 11/05/2007)
11/06/2007	88	REPLY to Response to Motion re 87 Response to Order,*Plaintiff's Objections to Text Only Order RE Hearing* filed by Melody Crews, Dial Equities, Inc. (Attachments: # 1 Exhibit A)(Monroe, Grover) Modified on 11/15/2007 (JKM). (Entered: 11/06/2007)
11/06/2007	89	MOTION to Strike 87 Response to Order, by Hinds County, Mississippi, Malcom McMillan (McDaniel, Clifford) Modified on 11/15/2007 (JKM). (Entered: 11/06/2007)
11/13/2007	90	ORDER: Plaintiff's objections to magistrate's order executed 8/13/07, motion to vacate/set aside/expunge order; motion for findings and memorandum of law in support thereof, and jury trial demand are without merit. Accordingly, the order of the magistrate judge is affirmed in all respects. Plaintiff is granted

		until 12/3/07 to post a $1,000.00 bond and, as stated, all other provisions of the order are declared to be in effect. Signed by Judge Tom S. Lee on 11/13/07 (LWE) (Entered: 11/13/2007)
11/13/2007		Minute Entry for proceedings held before Judge Linda R. Anderson : Motion Hearing held on 11/13/2007 regarding all pending motions filed herein. Participants: Allen McDaniel, counsel for defendant. The Court informed counsel of plaintiff's notice of nonparticipation. Counsel advised the Court of a new complaint that had been filed by plaintiff in this Court and the plaintiff's failure to post a security bond. The Court will proceed to rule on the pending motions. (WG) (Entered: 11/14/2007)
11/14/2007	91	MOTION for Extension of Time to File Response/Reply as to 88 Reply to Response to Motion by Vogel Newsome (JKM) (Entered: 11/14/2007)
11/14/2007	92	NOTICE ON NONPARTICIPATION IN NOVEMBER 13, 2007, HEARING: NON-WAIVER OF RIGHT TO JURY TRIAL ON THE ISSUES IN QUESTION AND NOTICE OF INTENT TO FILE MADAUMUS ACTION by Vogel Newsome (JKM) (Entered: 11/14/2007)
11/14/2007	93	RESPONSE to Motion re 89 MOTION to Strike 87 Response to Order filed by Vogel Newsome (Attachments: # 1 Exhibit I)(JKM) (Entered: 11/14/2007)
11/19/2007	94	NOTICE of Motion to Stay Proceedings by Vogel Newsome (JKM) (Entered: 11/20/2007)
11/19/2007	95	MOTION to Stay by Vogel Newsome (Attachments: # 1 Exhibit 1# 2 Exhibit 2# 3 Exhibit 3# 4 Exhibit 4# 5 Exhibit 5# 6 Exhibit 6# 7 Exhibit 7# 8 Exhibit 8# 9 Exhibit 9)(JKM) (Entered: 11/20/2007)
11/20/2007	96	MEMORANDUM IN SUPPORT re 95 MOTION to Stay filed by Vogel Newsome (JKM) (Entered: 11/20/2007)
11/30/2007	97	RESPONSE to Motion re 95 MOTION to Stay filed by Hinds County, Mississippi, Malcom McMillan (McDaniel, Clifford) (Entered: 11/30/2007)
11/30/2007	98	Joinder by Spring Lake Apartments LLC to 97 Response to Motion filed by Malcom McMillan, Hinds County, Mississippi (Pace, Lanny) (Entered: 11/30/2007)
11/30/2007	99	Joinder by Melody Crews, Dial Equities, Inc. to 97 Response to MOTION filed by Malcom McMillan, Hinds County, Mississippi (Monroe, Grover) Modified on 12/3/2007 (MGB). (Entered: 11/30/2007)
12/11/2007	100	Supplemental MOTION to Dismiss by Hinds County, Mississippi, Malcom McMillan (McDaniel, Clifford) (Entered: 12/11/2007)
12/12/2007	101	Joinder by Spring Lake Apartments LLC to 100 Supplemental MOTION to Dismiss filed by Malcom McMillan, Hinds County, Mississippi (Pace, Lanny) (Entered: 12/12/2007)
12/12/2007	102	Joinder by Melody Crews, Dial Equities, Inc. to 100 Supplemental MOTION to Dismiss filed by Malcom McMillan, Hinds County, Mississippi (May, Benny) (Entered: 12/12/2007)

12/13/2007	103	RESPONSE to Motion re 97 Response to Motion filed by Vogel Newsome (JKM) (Entered: 12/17/2007)
12/18/2007	104	MOTION to Strike 101 Joinder, 100 Supplemental MOTION to Dismiss, 102 Joinder by Vogel Newsome (JKM) (Entered: 12/19/2007)
12/18/2007	105	MEMORANDUM IN SUPPORT re 104 MOTION to Strike 101 Joinder, 100 Supplemental MOTION to Dismiss, 102 Joinder filed by Vogel Newsome (JKM) (Entered: 12/19/2007)
12/18/2007	106	NOTICE OF REQUEST FOR CERTIFICATION by Vogel Newsome re 90 Order, (JKM) (Entered: 12/19/2007)
12/18/2007		Remark - Certified copy of record and exhibits checked out to Mr. Moorehead, 633 Northstate Street, Jackson, MS 39209. (JKM) (Entered: 12/19/2007)
12/19/2007	107	RESPONSE to Motion re 104 MOTION to Strike 101 Joinder, 100 Supplemental MOTION to Dismiss, 102 Joinder, 105 Memorandum in Support filed by Hinds County, Mississippi, Malcom McMillan (McDaniel, Clifford) (Entered: 12/19/2007)
02/04/2008	108	ORDER denying 95 Motion to Stay Proceedings. Signed by Magistrate Judge Linda R. Anderson on 2/4/08 (CC) (Entered: 02/04/2008)
02/04/2008	109	ORDER denying 104 Motion to Strike 100 Supplemental Motion to Dismiss, 101 Joinder filed by Spring Lake Apartments LLC, and 102 Joinder filed by Melody Crews and Dial Equities, Inc. Signed by Magistrate Judge Linda R. Anderson on 2/4/08 (CC) (Entered: 02/04/2008)
02/19/2008	113	Writ of Continuing Garnishment Issued as to Vogel Newsome. (JKM) (Entered: 02/21/2008)
02/20/2008	110	MOTION for Recusal of Magistrate Judge Anderson by Vogel Newsome (JKM) (Entered: 02/21/2008)
02/20/2008	111	NOTICE OF FILING by Vogel Newsome re 108 Order on Motion to Stay, 109 Order on Motion to Strike (JKM) (Entered: 02/21/2008)
02/20/2008	112	Response in Opposition re 108 ORDER denying 95 Motion to Stay Proceedings. Signed by Magistrate Judge Linda R. Anderson on 2/4/08 (CC), 109 ORDER denying 104 Motion to Strike 100 Supplemental Motion to Dismiss, 101 Joinder filed by Spring Lake Apartments LLC, and 102 Joinder filed by Melody Crews and Dial Equities, Inc. Signed by Magistrate Judge Linda R. Anderson on 2/4/08 (CC) filed by Vogel Newsome (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L)(JKM) (Entered: 02/21/2008)
02/20/2008	114	NOTICE OF INTENT TO FILE DISQUALIFICATIONS/RECUSAL ACTION by Vogel Newsome re 110 MOTION for Recusal (JKM) (Entered: 02/22/2008)
02/21/2008		DOCKET ANNOTATION as to #113. Inadvertently filed in wrong case.

		(JKM) (Entered: 02/21/2008)
02/23/2008	115	Response in Opposition re 112 Response in Opposition re 108 ORDER denying 95 Motion to Stay Proceedings. Signed by Magistrate Judge Linda R. Anderson on 2/4/08 (CC), 109 ORDER denying 104 Motion to Strike 100 Supplemental Motion to Dismiss, 101 Joinder filed by Spring Lake Apartments LLC, and 102 Joinder filed by Melody Crews and Dial Equities, Inc. Signed by Magistrate Judge Linda R. Anderson on 2/4/08 (CC) filed by Vogel Newsome (Attachments: # Exhibit A, # Exhibit B, # Exhibit C, # Exhibit D, # Exhibit E, # Exhibit F, # Exhibit G, # Exhibit H, # Exhibit I, # Exhibit J, # Exhibit K, # Exhibit L)(JKM) filed by Hinds County, Mississippi, Malcom McMillan (McDaniel, Clifford) (Entered: 02/23/2008)
02/23/2008	116	MOTION to Strike 112 Response in Opposition,, by Hinds County, Mississippi, Malcom McMillan (McDaniel, Clifford) (Entered: 02/23/2008)
02/25/2008	117	MOTION *for General Relief and*, MOTION for Order to Show Cause *and for Hearing* by Melody Crews (Attachments: # 1 Exhibit A, # 2 Exhibit B) (Monroe, Grover) (Entered: 02/25/2008)
02/25/2008	118	RESPONSE to Motion re 112 Response in Opposition,, filed by Spring Lake Apartments LLC (Attachments: # 1 Exhibit Exhibit 1)(Pace, Lanny) (Entered: 02/25/2008)
02/25/2008	119	Joinder by Melody Crews, Dial Equities, Inc. to 118 Response to Motion filed by Spring Lake Apartments LLC, 116 MOTION to Strike 112 Response in Opposition,, filed by Malcom McMillan, Hinds County, Mississippi, 115 Response in Opposition,, filed by Malcom McMillan, Hinds County, Mississippi (May, Benny) (Entered: 02/25/2008)
02/28/2008	120	Joinder by Hinds County, Mississippi, Malcom McMillan to 117 MOTION *for General Relief and* MOTION for Order to Show Cause *and for Hearing* filed by Melody Crews (McDaniel, Clifford) (Entered: 02/28/2008)
03/11/2008	121	Response in Opposition re 117 MOTION *for General Relief and*, MOTION for Order to Show Cause *and for Hearing* by Melody Crews (Attachments: # 1 Exhibit A, # Exhibit B)(Monroe, Grover), 116 MOTION to Strike 112 Response in Opposition,, by Hinds County, Mississippi, Malcom McMillan (McDaniel, Clifford) filed by Vogel Newsome (JKM) (Additional attachment (s) added on 3/11/2008: # 1 Exhibit 1-16) (JKM). (Entered: 03/11/2008)
03/11/2008	122	MEMORANDUM IN SUPPORT re 121 Response in Opposition, filed by Vogel Newsome (JKM) (Entered: 03/11/2008)
03/12/2008	123	MOTION to Strike 116 MOTION to Strike 112 Response in Opposition,, by Vogel Newsome (Attachments: # 1 Exhibit 1-8)(JKM) (Entered: 03/13/2008)
03/12/2008	124	MEMORANDUM in Support re 123 MOTION to Strike 116 MOTION to Strike 112 Response in Opposition,, filed by Vogel Newsome (JKM) (Entered: 03/13/2008)
03/13/2008	125	RESPONSE in Opposition re 123 MOTION to Strike 116 MOTION to Strike 112 Response in Opposition,, filed by Hinds County, Mississippi, Malcom McMillan (McDaniel, Clifford) (Entered: 03/13/2008)

03/13/2008	126	ORDER CONSOLIDATING CASES 3:07CV560 AND 3:07CV99 ARE CONSOLIDATED. IT IS FURTHER ORDERED THAT ALL PLEADINGS WILL BE FILED IN LEAD CASE CIVIL ACTION 3:07cv99. Signed by District Judge William H. Barbour, Jr on 3/13/08 (JKM) (Entered: 03/13/2008)
03/13/2008	127	RESPONSE to Motion re 121 Response in Opposition, *and Reply to Plaintiff's Objection, Etc. to Motion for Show Cause Hearing and For General Relief* filed by Melody Crews (Monroe, Grover) (Entered: 03/13/2008)
03/14/2008	128	RESPONSE in Opposition re 123 MOTION to Strike 116 MOTION to Strike 112 Response in Opposition filed by Vogel Newsome (Attachments: # 1 Exhibit)(THR) (Entered: 03/18/2008)
03/14/2008	129	MOTION for Sanctions by Vogel Newsome (this motion has the same PDF as #128) (Attachments: # 2 Exhibit)(THR) (Modified on 3/19/2008 to add correct PDF(SEC). on 3/19/2008: # 3 Main Document) (SEC). (Entered: 03/18/2008)
03/14/2008	130	MEMORANDUM in Support re 128 Response in Opposition to Motion, 129 MOTION for Sanctions filed by Vogel Newsome (THR) (Entered: 03/18/2008)
03/14/2008	131	MOTION to Strike statements and meterials of defendant Spring Lake Apartments, LLC by Vogel Newsome (THR) (Entered: 03/18/2008)
03/14/2008	132	MEMORANDUM IN SUPPORT re 131 MOTION to Strike filed by Vogel Newsome (THR) (Entered: 03/18/2008)
03/17/2008		TEXT ONLY ORDER hereby relieving any and all Defendants in this cause of the requirement of Uniform Local Rule 7.2(C). By Order of this Court, Defendants shall not be required to respond to any pending or future pleadings or filings by pro se Plaintiff, Vogel Newsome, unless otherwise directed by the Court. Signed by Magistrate Judge Linda R. Anderson on 3/17/08. NO FURTHER WRITTEN ORDER SHALL FOLLOW. (CC) Modified on 3/17/2008 (CC). (Entered: 03/17/2008)
03/25/2008	133	Response in Opposition re 126 ORDER CONSOLIDATING CASES 3:07CV560 AND 3:07CV99 ARE CONSOLIDATED. IT IS FURTHER ORDERED THAT ALL PLEADINGS WILL BE FILED IN LEAD CASE CIVIL ACTION 3:07cv99. Signed by District Judge William H. Barbour, Jr on 3/13/08 (JKM) filed by Vogel Newsome (JKM) (Entered: 03/25/2008)
03/25/2008	134	MEMORANDUM IN SUPPORT re 133 Response in Opposition, filed by Vogel Newsome (JKM) (Entered: 03/25/2008)
03/25/2008	135	Response in Opposition re 126 ORDER CONSOLIDATING CASES 3:07CV560 AND 3:07CV99 ARE CONSOLIDATED. IT IS FURTHER ORDERED THAT ALL PLEADINGS WILL BE FILED IN LEAD CASE CIVIL ACTION 3:07cv99. Signed by District Judge William H. Barbour, Jr on 3/13/08 (JKM) filed by Vogel Newsome (JKM) (Entered: 03/25/2008)
03/25/2008	136	MEMORANDUM IN SUPPORT re 135 Response in Opposition, filed by Vogel Newsome (JKM) (Entered: 03/25/2008)

03/25/2008	137	NOTICE OF FILING OF OBJECTIONS by Vogel Newsome re 135 Response in Opposition, 136 Memorandum in Support (JKM) (Entered: 03/25/2008)
03/25/2008	138	NOTICE OF FILING OF OBJECTIONS by Vogel Newsome re 133 Response in Opposition, 134 Memorandum in Support (JKM) (Entered: 03/25/2008)
03/27/2008	139	RESPONSE in Opposition re 40 Second MOTION for Extension of Time to File Answer filed by Vogel Newsome (JKM) (Entered: 03/27/2008)
03/27/2008	140	MEMORANDUM IN SUPPORT re 139 Response in Opposition to Motion filed by Vogel Newsome (JKM) (Entered: 03/27/2008)
04/04/2008	141	Response to Order re TEXT ONLY ORDER hereby relieving any and all Defendants in this cause of the requirement of Uniform Local Rule 7.2(C). By Order of this Court, Defendants shall not be required to respond to any pending or future pleadings or filings by pro se Plaintiff, Vogel Newsome, unless otherwise directed by the Court. Signed by Magistrate Judge Linda R. Anderson on 3/17/08. NO FURTHER WRITTEN ORDER SHALL FOLLOW. (CC) Modified on 3/17/2008 (CC). filed by Vogel Newsome (JKM) (Entered: 04/04/2008)
04/04/2008	142	MOTION for Summary Judgment by Melody Crews, Dial Equities, Inc. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D) (Monroe, Grover) (Entered: 04/04/2008)
04/04/2008	143	MEMORANDUM in Support re 142 MOTION for Summary Judgment filed by Melody Crews, Dial Equities, Inc. (Monroe, Grover) (Entered: 04/04/2008)
04/09/2008	144	ORDER: Plaintiff is directed to include civil action number 3:07cv99 in pleadings filed in this action and may further indicate in the style that the two actions (3:07cv99 and 3:07cv560) are consolidated. Furthermore, following entry of this order, the clerk of court is directed to return, unfiled, any "pleadings" which do not comport with this order. Signed by District Judge Tom S. Lee on 4/9/08 (LWE) (JKM). (Entered: 04/09/2008)
04/24/2008	145	ORDER REFERRING MOTIONS: 142 MOTION for Summary Judgment; 131 MOTION to Strike; 123 MOTION to Strike; 116 MOTION to Strike; 75 MOTION to Strike; 91 MOTION for Extension of Time to File Response/Reply; 68 Joinder in motion *to Dismiss*; 110 MOTION for Recusal; 117 MOTION *for General Relief and* MOTION for Order to Show Cause *and for Hearing*; 129 MOTION for Sanctions; 89 MOTION to Strike; 78 MOTION to Strike. Signed by District Judge Tom S. Lee on 4/24/08 (LWE) (Entered: 04/24/2008)
04/25/2008	146	Response to Order re 144 ORDER: Plaintiff is directed to include civil action number 3:07cv99 in pleadings filed in this action and may further indicate in the style that the two actions (3:07cv99 and 3:07cv560) are consolidated. Furthermore, following entry of this order, the clerk of court is directed to return, unfiled, any "pleadings" which do not comport with this order. Signed by District Judge Tom S. Lee on 4/9/08 (LWE) (JKM). filed by Vogel Newsome (JKM) (Entered: 04/25/2008)
04/29/2008	147	NOTICE OF FILING OF MOTION FOR CONTINUANCE AND MOTION

		TO STRIKE by Vogel Newsome (JKM) (Entered: 04/30/2008)
04/29/2008	148	Rebuttal re 142 MOTION for Summary Judgment filed by Vogel Newsome (JKM) (Entered: 05/01/2008)
04/29/2008	149	MEMORANDUM IN SUPPORT re 148 Rebuttal filed by Vogel Newsome (JKM) (Entered: 05/01/2008)
05/05/2008	150	REPLY to Response to Motion re 148 Rebuttal, 149 Memorandum in Support filed by Melody Crews, Dial Equities, Inc. (Monroe, Grover) (Entered: 05/05/2008)
05/06/2008	151	Response in Opposition re 145 ORDER REFERRING MOTIONS: 142 MOTION for Summary Judgment; 131 MOTION to Strike; 123 MOTION to Strike; 116 MOTION to Strike; 75 MOTION to Strike; 91 MOTION for Extension of Time to File Response/Reply; 68 Joinder in motion *to Dismiss*; 110 MOTION for Recusal; 117 MOTION *for General Relief and* MOTION for Order to Show Cause *and for Hearing*; 129 MOTION for Sanctions; 89 MOTION to Strike; 78 MOTION to Strike. Signed by District Judge Tom S. Lee on 4/24/08 (LWE) filed by Vogel Newsome (JKM) (Entered: 05/08/2008)
05/06/2008	152	NOTICE of Filing by Vogel Newsome re 151 Response in Opposition,, (JKM) (Entered: 05/08/2008)
05/29/2008	153	REPORT AND RECOMMENDATIONS: recommending that the complaint be dismissed. Plaintiff should not be allowed to file pleadings in this court without paying the $1000 that she was previously ordered to pay. Objections to R&R due by 6/18/2008. Signed by Magistrate Judge Linda R. Anderson on 5/29/08. (ACF) (Entered: 05/29/2008)
06/09/2008	154	OBJECTION to 153 Report and Recommendations by Melody Crews (Monroe, Grover) (Entered: 06/09/2008)
06/09/2008	155	OPINION AND ORDER. Plaintiff's Motion to Amend[Docket No. 42 in Member Case 3:07cv560WHB-LRA] is hereby denied. The Clerk of Court is directed to file a copy of this Opinion and Order in both of the above referenced lawsuits. No further pleading shall be filed in the Member Case 3:07cv560WHB-LRA, unless authorized by the Court. Signed by District Judge William H. Barbour, Jr on 6-9-08 (Lewis, Nijah) (Entered: 06/09/2008)
06/11/2008	156	OBJECTION to 153 Report and Recommendations by Spring Lake Apartments LLC (Pace, Lanny) (Entered: 06/11/2008)

Samuel Givens, Jr
Clerk

OFFICE OF
CLERK OF COURT OF APPEALS

360 Democrat Drive
Frankfort, Kentucky 40601-9229

Telephone:
(502) 573-7920
FAX:
(502) 573-6795

RECEIPT NOTICE

2008-CA-000379
DENISE NEWSOME
P.O. BOX 14731
CINCINNATI OH 45250

TO: DENISE NEWSOME
FROM: Samuel Givens, Jr, Clerk
DATE: 04/07/2008
RE: 2008-CA-000379

DENISE NEWSOME APPELLANTS

V.

HENRY CURTIS, IN HIS OFFICIAL CAPACITY AS CHAIRPERSON, ET A APPELLEES

The document listed below has been received and filed in this office today in the above case:

PETITIONERS' MOTION TO COMPEL COURT OF APPEALS INTERVENTION AND/OR EXERCISE OF SUPERVISORY POWERS

CC: JAMES M WEST
FILE COPY

MORGAN G. RANSDELL

EXHIBIT "85"

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

NO. 2008-CA-000379

DENISE NEWSOME — PETITIONER

vs. **ORIGINAL** ACTION
FROM KENTUCKY COMMISSION ON HUMAN RIGHTS
KCHR NO. 1423-H
HUD NO. 04-08-0007-8

HENRY CURTIS, IN HIS OFFICIAL CAPACITY AS CHAIRPERSON AND
JOHN J. JOHNSON, IN HIS OFFICIAL CAPACITY AS EXECUTIVE DIRECTOR AND
LiANDRA GOATLEY, IN HER OFFICIAL CAPACITY AS ENFORCEMENT OFFICER AND
KENTUCKY COMMISSION ON HUMAN RIGHTS — RESPONDENTS

And

GARY M. MARTIN, BERNICE MARTIN,
DENNIS DONNELLAN, and BETTY DONNELLAN,
d/b/a GMM PROPERTIES — REAL PARTIES IN INTEREST

PETITIONER'S MOTION TO COMPEL COURT OF APPEALS' INTERVENTION AND/OR EXERCISE OF SUPERVISORY POWERS[1]

COMES NOW Petitioner Denise Newsome ("Petitioner") and hereby provides this Court with her *Motion to Compel Court of Appeals' Intervention and/or Exercise of Supervisory Powers* ("MTCCOA"). Through this instant Motion, the Petitioner seeks this Court's jurisdiction and intervention and supervisory powers to compel the Kentucky Commission on Human Rights' officials and/or agents (collectively known as "Commission") to **certify** the record and produce the record for review and inspection to this Court in its possession as it relates to Case Nos. KCHR NO. 1423-H and HUD NO. 04-08-0007-8. In support thereof the Petitioner states the following:

ISSUES RAISED

1. This Court has jurisdiction over the subject matter and issues the Petitioner intends to bring through her Writ of Mandamus action.

[1] NOTE: Boldface, italics and underline, boxing, etc. represents "emphasis" added. Use of legal resources such as Westlaw, American Jurisprudence, and other legal resource materials in preparation of this instant pleading.

2. The Petitioner has in good faith sought to obtain the record in Case Nos. KCHR NO. 1423-H and HUD NO. 04-08-0007-8; however, such efforts have been met with deliberate and malicious intent by the Commission to deprive her equal protection of the laws and due process of laws. Moreover, acts taken by the Commission to obstruct the administration of justice.

3. This instant MTCCOA is submitted in good faith and is not provided for purposes of delay, hindering proceedings, obstructing the administration of justice, or to needlessly increase the costs of litigation.

4. This instant pleading is being filed to preserve the rights of the Petitioner secured to her under the Kentucky Constitution, U.S. Constitution, Civil Rights Act, Fair Housing Act, and other laws governing said matters to assure she receives *equal* protection of the laws and due process of laws.

5. Plaintiff would be heavily prejudiced and subjected to unlawful/illegal acts by the Commission if this Court does not intervene and exercise its supervisory powers and correct the injustices complained of herein.

6. Petitioner requests this Court issue the proper mandate requiring the Commission **CERTIFY** and produce the record in Case Nos. KCHR NO. 1423-H and HUD NO. 04-08-0007-8 for its receipt and review to determine whether the Petitioner is entitled to the record for aid her in preparation of her Mandamus Brief.

7. This Court has jurisdiction over this instant motion as well as the subject matter and issues the Petitioner intends to bring through her Writ of Mandamus action.

8. Because a Writ of Mandamus action is an extraordinary remedy which compels the performance of a ministerial act or mandatory duty where there is clear legal right (*County of Harlin v. Appalachian Regional Healthcare, Inc.*, 2002 WL 31132943), Petitioner will be filing the required Mandamus action in that the Kentucky Commission has refused to comply with the statutes/laws upon which it is governed and clearly and blatantly refused to perform ministerial act and/or mandatory duties owed the Petitioner as a matter of statutes/laws governing the action the Petitioner filed with it.

9. The mandatory and/or ministerial duties the Kentucky Commission owes to the Petition **is** **not** *discretionary* and are such that are required by statutes/laws and, thus, warrants the Kentucky Court of Appeals supervisory and jurisdictional authorities to compel the Kentucky Commission to perform mandatory obligations required by statutes/laws. Therefore, the Writ of Mandamus action is necessary to require the Kentucky Commission perform legal duties mandated by statutes/laws. *Broadway Nat. Bank v. Hargis,* 38 S.W.2d 674.

10. Relief sought through this instant pleading **is** **not** *discretionary*, but ***MANDATORY*** as a matter of law

11. The burden of proof is on the Commission. On or about **January 24, 2008,** Petitioner through "*Complainant's Notice to File Writ of Mandamus Action*"

("Notice to File") requested the record of the Commission to aid her in the preparation of her brief. See **EXHBIT "A" (Brief Only)** attached hereto and incorporated by reference as if set forth in full herein.

12. With foresight that the Commission would use ***dilatory acts/tactics*** in an effort to deprive Petitioner the record in its possession to aid her in the preparation of her Writ of Mandamus brief, Petitioner on or about February 18, 2008, submitted for filing with this Court "Petitioner's Motion to Stay Proceedings Pending Writ of Mandamus Action." Petitioner believed that the Commission would think she would be stupid enough to trust them in providing her with the record in its possession without opposition. The Commission thinking Petitioner would be stupid enough to trust them and allow the time to expire before filing her Mandamus action. However, to its disappointment, due to the Petitioner's belief of unlawful/illegal and unethical practices by the Commission and/or its agents, Petitioner knew to prepare and file the applicable pleading to preserve her claims that she would seek to bring against the Commission through mandamus action. Through the willful, malicious and wanton acts of the Commission, Petitioner to date still has not received the entire record in its possession to aid her in the preparation of her Mandamus Brief. Thus, the intervention and supervisory powers of this Court is requested to aid in the administration of justice.

The Commission issued its Dismissal Order on or about January 22, 2008. The Commission aware of Petitioner's request for the record "within the next ten (10) days," from the Notice to File that she was due the record on or before **February 4, 2008**. However, two days later – on or about **February 6 or 7, 2008**[2] – the Commission provided Petitioner with a form letter advising:

> After review of the Complainant's Notice to File Writ of Mandamus Action, the Commission is processing your request for records. Though the Kentucky Open Records Act generally requires a response within three business days following receipt of an open records request, the Commission requires additional time, through and including Friday, February 15, 2008, in which to provide its response. Again I apologize for the delay.

See **EXHIBIT "B"** attached hereto and incorporated by reference as if set forth in full herein. A reasonable mind may conclude that this was a dilatory tactic by the Commission to *obstruct the administration of justice* and deliberate acts to *deprive the Petitioner equal protection of the laws* and *due process of laws*. Moreover, actions taken by the Commission to cover-up unlawful/illegal and unethical practices.

The Commission was requested to provide Petitioner with the record within 10 days from the date of the Notice to File. Thus, giving the Commission until **February 4, 2008**. The Commission waited until **February 6 or 7, 2008** to notify the Petitioner of its inability to provide her with the record and in ***bad-faith*** stated "additional time, through Friday, **February 15, 2008**, in which to provide its

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[2] Date of letter is obstructed. Said letter references matters (*Walter Combs v. Consolidated Biscuit Company* and *Lucy McKossic v. Consolidated Biscuit Company*) which are not related the Petitioner.

response." Such **dilatory** action to obstruct the administration of justice and efforts taken to deprive the Petitioner rights secured/guaranteed under the Constitution. The Commission having requested an additional 11 days (from the date upon which Petitioner had given them). While according to their policies, they were to provide Petitioner with the record **within three (3) days** – which would have been January 31, 2008, in that they allege receipt of January 28, 2008. The Commission having knowledge that the Petitioner had 30 days from January 22, 2008 in which to file the applicable action. Therefore giving the Petitioner until approximately February 21, 2008 in which to file her Mandamus Brief with this Court. While the Commission advised that their response would be made on February 15, 2008, said statement was false. The Commission intending to allow as much time to expire as possible in hopes of obtaining a lapse of time for the Petitioner to file her Mandamus action. On February 18, 2008 – approximately three days **after** the date the Commission advised the Petitioner would receive a response – the Commission provided the Petitioner with an ***incomplete copy record*** of the record rather than the original record as requested by the Petitioner. Commission mailing out on February 18, 2008 – See **EXHIBIT "C"** copy of front of envelope evidencing postmarking and correspondence, attached hereto and incorporated by reference – with knowledge of the Petitioner's deadline to file Mandamus action being approximately February 21, 2008. Therefore, the Commission knew that through such dilatory tactics, the Petitioner would not have time to review the documents received and timely prepare her Mandamus Brief. Moreover, the Commission knew that it was not providing the Petitioner with any information she did not already have – merely providing the Petitioner with copy of documents given to it by the Petitioner.

However, to the Commission's disappointment, the Petitioner with foresight that it would attempt to obstruct justice and attempt to withhold documents from her in efforts of covering up and/or shielding unlawful/illegal and unethical practices in their handling of Petitioner's Complaint, on February 18, 2008, submitted for filing with this Court her *Motion to Stay Proceedings Pending Writ of Mandamus Action.*

13. The Commission predated their letter to reflect February 15, 2008, when it fact it knew and/or should have known that said letter was not being mailed until February 18, 2008. Then the Commission merely relied upon unsubstantiated statutes and mere assertions that the record requested has exempt status. *Merely asserting exemption and providing statutory citations does not even remotely comply with the requirement under the Act that the Commission and/or custodian of the record provide particular and detailed information as required by law; moreover, much less amount to substantial compliance.*

14. Pursuant to KRS 61.878 and/or the applicable governing statutes/laws, the Petitioner is entitled to receipt of free and open examination of the record. Moreover, as a party to the action and with an interest in the outcome of proceeding is entitled to record and/or access to record for review and examination.

> *Medley v. Board of Educ., Shelby County,* 168 S.W.3d 398 (Ky.App.,2004) - Under the Open Records Act, the burden is on the public agency opposing disclosure to establish that a record is exempt from release. KRS 61.878.

Medley v. Board of Educ., Shelby County, 168 S.W.3d 398 (Ky.App.,2004) - The basic policy of the Open Records Act is that free and open examination of public records is in the public interest. KRS 61.878.

Medley v. Board of Educ., Shelby County, 168 S.W.3d 398 (Ky.App.,2004) - Circuit Court's review of an Attorney General's opinion on review of a public agency's denial of a request to inspect a public record is de novo, and as such, Court of Appeals reviews the Circuit Court's opinion as Court of Appeals would the decision of a trial court. KRS 61.882.

Hardin County Schools v. Foster, 40 S.W.3d 865 (Ky.,2001) - Public agency that is the subject of an Open Records Act request has the burden of proving that the document sought fits within an exception to the Open Records Act. KRS 61.882(3) . . . .[3] [4] The public agency that is the subject of an Open Records request, has the burden of proving that the document sought fits within an exception to the Open Records Act. KRS 61.882(3) and University of Kentucky v. Courier Journal, Ky., 830 S.W.2d 373 (1992). The statute demonstrates a general bias favoring disclosure. See Kentucky Board of Examiners of Psychologists v. Courier-Journal, Ky., 826 S.W.2d 324 (1992). The Court of Appeals correctly held that the Hardin County School System had not sustained its burden.

15. The reasons provided by the Commission for its failure to comply with Petitioner's request for record in its letter dated February 15, 2008, is sham/frivolous and clearly prohibited by statute/laws and is a dilatory tactic/act by the Commission to obstruct the administration of justice and to deprive the Petitioner equal protection of the laws and due process of laws. Said acts by the Commission being willful and malicious to obstruct and prevent the Petitioner from bringing a Mandamus action against it. Said acts by the Commission being unlawful/illegal and unethical. From the February 15, 2008 correspondence of the Commission, it has failed to meet its burden of proof to sustain the mere assertions for failure to comply with the Petitioner's request. ***The proffered reasons presented by the Commission was provided in bad-faith, is sham/frivolous, presented for harassment, delay, hindering of proceedings, to needlessly increase the cost of litigation, obstruct the administration of justice, deprive the Petitioner equal protection of the laws and due process of laws, acts to hide/shield unlawful/illegal acts known to the Commission, acts to shield/hide discriminatory actions in its handling of Petitioner's Complaint, etc.***

The laws are clear that the Petitioner is entitled to review and inspection of the Commissions record as it relates to the Complaint she filed with it. Moreover, that the Commission has no valid and/or legal defense which prohibits the Petitioner from receipt and/or review and inspection of the record to aid her in the preparation of the mandamus action she seeks to bring. Because of the conflict that arises from such sham/frivolous assertion by the Commission, this Court's intervention and or supervisory power is required

to obtain the record of the Commission and to determine the validity of such assertions made in its claims of exemption – moreover, to determine whether the Petitioner is entitled to review and examination of the record to aid her in the preparation of her mandamus brief.

> *Palmer v. Driggers,* 60 S.W.3d 591(Ky.App.,2001) - Personal privacy exemption of the Open Records Act exhibits a general bias favoring disclosure, and thus an agency which would withhold records bears the burden of proving their exempt status. KRS 61.882(3).
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> *Palmer v. Driggers,* 60 S.W.3d 591 (Ky.App.,2001) - Public's right to know under the Open Records Act is premised upon the public's right to expect its agencies properly to execute their statutory functions, and in general, inspection of records may reveal whether the public servants are indeed serving the public, and the policy of disclosure provides impetus for an agency steadfastly to pursue the public good. KRS 61.878(1)(a).
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> *Palmer v. Driggers,* 60 S.W.3d 591 (Ky.App.,2001) - First step in an analysis under the personal privacy exemption of the Open Records Act must begin with a determination as to whether the information in question is of a personal nature, and if it is, then the court must determine whether public disclosure would constitute a clearly unwarranted invasion of personal privacy, which entails the comparative balancing of interests. KRS 61.878(1)(a).

16. The Petitioner had the right to expect and demand that the Commission follow the statutes/laws and **mandatory** procedures in the handling of her Complaint. Moreover, the Petitioner had a right to expect that the Commission and/or its agents performed the **mandatory** *duties* – not those that are discretionary – in the handling of her Complaint. As a matter of law, the Petitioner is entitled to review and inspection of the record to aid in the preparation of her Mandamus Brief as well as for purposes of determining whether the Commission and/or its agents performed duties in compliance with the statutes/laws in which it/they are governed. Moreover, to determine if the Commission and/or its agents are indeed serving the public in accordance with the statutes/laws upon which it/they are governed and/or were created. The Commission has a duty, as a matte r of law/statute, to pursue the public interest. Petitioner believes that the record will reflect that the Commission and/or its agents have failed to perform the ministerial duties *mandated* by laws/statutes. Furthermore, Petitioner believes the record of the Commission will support that it and/or its agents took a far departure from the laws/statutes for unlawful/illegal and unethical purposes. That the actions taken by the Commission will support discriminatory intent towards the Petitioner. That the Commission's and/or its agents' acts were deliberately done to deprive the Petitioner of equal protection of the laws and due process of laws. Rights secured under the Constitution.

17. Petitioner believes that the record as it relates to her Complaint filed with the Commission will reveal violations not only to the Petitioner, but to the public and/or others. Furthermore, the Commissions knowledge of said information

and its efforts to cover-up/shield an illegal animus clearly known to it and its **mandatory** *duty and obligation* to prevent – however, it has elected not to do so for ill and unlawful purposes. Petitioner believes the Commission's record will reveal that the sham/frivolous assertions to exemption is merely pretext to shield its receipt and on knowledge of prohibited materials and/or information to prejudice it in the handling of Petitioner's Complaint. Moreover, will support that information in its record will support discriminatory intent towards the Petitioner upon which it knew and/or should have known the laws prohibited. *The Commission having knowledge that the information in its record as it relates to the Petitioner's Complaint cannot and will not support/sustain the conclusion reached – Dismissal Order entered on January 22, 2008*.

18. Petitioner believes that the Commission allowed Real Parties of Interest counsel to provide and/or present documentation clearly prohibited by laws and allege exemption is sham/frivolous in efforts of aiding said parties and their counsel in civil/criminal wrongs. Said wrongs clearly prohibited by laws. It appears to the Petitioner, the Commission merely thought that the Petitioner would seek to bring a civil lawsuit against the Real Parties of Interest and never request review of the record and challenge their handling of her Complaint. The Commission merely thought that the Petitioner would be stupid enough to not request a copy of the Real Parties of Interest responsive pleading to the Complaint filed. As a matter of law/statutes governing the Commission, under the Kentucky Constitution and other governing statutes/laws on such matters, the Petitioner is entitled to know what information and the response of the Real Parties of Interest to her Complaint as well as other information obtained and/or received during the Commission's handling of her Complaint that it relied upon to reach its decision. Moreover, receipt and review of said evidence and/or information to determine whether the Dismissal Order entered by the Commission can be sustained; or whether the Dismissal Order is arbitrary and/or capricious – lacking any evidence to sustain it.

19. *Petitioner believes that the Commission's record will reflect that its and/or its agents' acts are willful, malicious and wanton and were deliberately and purposefully done with intent to deprive the Petitioner equal protection of the laws and due process of laws. Moreover, reveal corrupt practices and acts of the Commission and/or its agents. The information the Petitioner seeks is not only of interest to her, but of public interest. Plaintiff believes a reasonable mind may conclude that any confidential information in the record can be protected by simply redacting said information (i.e. social security number, driver's license number and/or information one may attempt to use for purposes of identity theft). Therefore, the intervention and/or supervisory power of this Court is sought to obtain the record of the Commission to determine whether the assertion for exemption is valid*.

20. The laws are clear, that the Commission's handling of the Petitioner's Complaint is **open to *public* scrutiny** and the Petitioner's right to determine if the Commission followed the statute/laws it is mandatorily required to follow in the handling of her Complaint and the evidence that it relied upon to reach its decision. The Dismissal Order is clearly void of any evidence, facts or legal conclusions to sustain it and therefore, leaves said order open for scrutiny and to be challenged.

Department of Air Force v. Rose, 96 S.Ct. 1592 (U.S.N.Y.,1976) - Congress in enacting Freedom of Information Act structured a revision whose stated purpose reflected a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language; congressional objective was to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.

Hines v. Com., Dept. of Treasury, 41 S.W.3d 872 (Ky.App.,2001) - Public's right to disclosure under Open Records Act is premised only upon its right to be informed as to whether governmental agencies properly execute their statutory functions. KRS 61.878(1)(a).

American Commercial Barge Lines Co. v. N.L.R.B., 758 F.2d 1109 (C.A.6.Ohio,1985) - Disclosure, not secrecy, is dominant objective of Freedom of Information Act. 5 U.S.C.A. § 552.

21. Because of the Commission's refusal to voluntarily release the record to her for review and inspection to aid in the preparation of her Mandamus Brief – wherein the Petitioner is a party to the action before the Commission – The Mandamus action the Petitioner will bring before this Court is permissible as a matter of law. From a recent report released, Kentucky ranked **NO. 3** on the list for most *corrupt state* – as it relates to *public officials*. (See **EXHIBIT "D"** attached hereto and incorporated by reference). Thus, supporting even further proof of Petitioner's need to scrutinize the Commission's handling of her Complaint, in that its officials/agents may have committed willful and deliberate illegal/unlawful and unethical acts in efforts of depriving the Petitioner equal protection of the laws and due process of laws – acts to aid and/or provide the Real Parties of Interest and their counsel special favors. Therefore, the Petitioner is entitled to the record to determine such issues and whether further legal actions may be warranted. Whether said parties/persons are subject to prosecution. Petitioners seeks to bring Writ of Mandamus action in good faith to obtain justice in which she is entitled. The information the Petitioner seeks is permissible as a matter of law, information to aid her in the preparation of her Mandamus Brief, and will reveal legal wrongs in which the Commission is attempting to shield/hide.

State ex rel. Mayes v. Holman 76 Ohio St.3d 147, 666 N.E.2d 1132 (Ohio,1996) - Mandamus is appropriate to compel compliance with Public Records Act. R.C. § 149.43.

N.L.R.B. v. Robbins Tire & Rubber Co., 98 S.Ct. 2311 (U.S.Ala.,1978) - Basic purpose of the Freedom of Information Act is to ensure an informed citizenry, vital to functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed; the Act was not intended to function as a private discovery tool.

GTE Sylvania, Inc. v. Consumers Union of U. S., Inc., 100 S.Ct. 1194 (U.S.Dist.Col.,1980) - Freedom of Information Act was intended to

establish a general philosophy of full agency disclosure and to close the loopholes which allow agencies to deny legitimate information to the public.

Kentucky Bd. of Examiners of Psychologists and Div. of Occupations and Professions, Dept. for Admin. v. Courier-Journal and Louisville Times Co., 826 S.W.2d 324 (Ky.,1992) - Public's "right to know" under Open Records Act is premised upon public's right to expect its agencies to execute their statutory functions properly.

Zink v. Com., Dept. of Workers' Claims, Labor Cabinet, 902 S.W.2d 825 (Ky.App.,1994) - In determining whether information sought by attorney under Open Records Act for marketing purposes was subject to nondisclosure as unwarranted invasion of personal privacy, court's analysis did not turn on purposes for which request for information was made or identity of person making request; ?Legislature intended to grant any member of public as much right to access to information as the next. KRS 61.878(1)(a), 61.970.

Zink v. Com., Dept. of Workers' Claims, Labor Cabinet, 902 S.W.2d 825 (Ky.App.,1994) - In determining whether information sought under Open Records Act is subject to nondisclosure as unwarranted invasion of personal privacy, court's analysis does not turn on purposes for which request for information was made or identity of person making request, but rather only relevant public interest in disclosure to be considered is extent to which disclosure would serve principle purpose of Act. KRS 61.878(1)(a), 61.970.

Zink v. Com., Dept. of Workers' Claims, Labor Cabinet, 902 S.W.2d 825 (Ky.App.,1994) - At its most basic level, purpose of disclosure under Open Records Act focuses on citizens' right to be informed **as to what their government is doing**. KRS 61.870 et seq.

22. The Commission is aware that the Petitioner was entitled to review and inspection of the record as well as requested information to determine what responses were provided by Real Parties of Interest, etc. and Petitioner's right to contest or said parties response or that of the Commission. However, because the Commission has repeatedly refused to provide the Petitioner with the record as well as a copy of Real Parties of Interest response, the Petitioner has been deprived of rights secured under the Constitution.

> Fundamental requisite of "due process" is the opportunity to be heard, be aware of matter pending, to make an informed choice whether to acquiesce or contest, and to assert before the appropriate decision-making body the reasons for such choice. *Trinity Episcopal Corp v. Romney,* 387 F.Supp. 1044, 1084; *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 336, 70 S.Ct. 652.

No the Commission merely thought that the Petitioner would rely upon verbal and or

vague conclusions without requesting review of the record to determine whether or not they performed the **mandatory** ministerial duties owed her under the statutes/laws in which it is governed. Petitioner having valid concerns of possible legal wrongs being committed in the handling of her Complaint, timely advised the Commission that she would be seeking proof and/or evidence it would rely upon in reaching its decision.

23. While the Commission through pleading entitled, "Response to Petition for Writ of Mandamus," provided as documents attached entitled, "Case Summary," "Case Determination," etc., such information was Petitioner's first time receiving such information. This information being provided through pleadings filed with this Court. Clearly evidencing **PRETEXT** – information provided **AFTER** the Commission receipt of Notice to File and **AFTER** the filing of Petitioner's Motion to Stay. **THIS INFORMATION *WAS NOT* PRODUECED IN THE DOCUMENTS THE COMMISSION PROVIDED THE PETITIONER ON FEBRUARY 18, 2008.** As a matter of law, the Petitioner is entitled to review and inspect the record to determine the authenticity of the information provided. It is in the Commission's interest to prevent and withhold information it knows would be contradictory to the documents provided. In that the Commission has revealed such information, it has now opened the door for such statements to be investigated and scrutinized. Merely expecting this Court and the Petitioner to rely upon said documents without checking authenticity and credibility of information contained therein, is clearly in violation of the Petitioner's Constitutional rights and in violation of the applicable statutes/laws governing said matters. Petitioner believes that the record will reflect what issues were raised in her **14-Page** typewritten Complaint dated September 20, 2007 – *which the Commission has withheld and has refused to address the issues raised therein.* A **mandatory** duty (addressing of issues and evidence presented) required by law. A duty which is not discretionary. Said failure by the Commission is clearly revealed through documents presented of its efforts to prejudicially, selectively and discriminatorily provide information that it believes is more favorable to them and the Dismissal Order entered. However, as a matter of law, the Petitioner is entitled to receipt and review of the record to conduct an investigation and determine for herself whether or not the ministerial duties owed her in the handling of her Complaint was done. Petitioner believes the record of the Commission will reveal legal wrongs to deprive her equal protection of the laws and due process of laws. Moreover, that the Commission is attempting to rely upon the *craftiness* and *deceitfulness* of its attorney to circumvent the laws. This is why the Commission has failed to produce any facts, evidence or legal conclusions as required by law to rebut that presented by the Petitioner, because it cannot; and, such acts as the filing of their Response to Petition for Writ of Mandamus" is merely for false pretense.

24. The record evidence in this instant action will reveal that **no** Writ of Mandamus Brief has been filed in this action. Moreover, the Commission's deliberate acts to prevent and unlawful/illegal acts to preclude such filing.

25. Petitioner is not only a party to the action she filed with the Commission, but is a citizen of the State of Kentucky. Therefore, she has a right to receipt and review of the record in the Commission's possession as it relates to her

Complaint and/or her. Moreover, receipt of the Commission's record as it relates to her Complaint to aid her in the preparation of the Mandamus action she seeks to bring before this Court.

> *Courier-Journal & Louisville Times Co. v. Curtis,* 335 S.W.2d 934 (Ky.,1959) - Under the common-law rule that a person may inspect public records in which he has an interest when necessity for inspection is shown, without the interest defined in the rule the right of inspection does not exist, and without the right of inspection there is no right to mandamus or other mandatory process.
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> *Kentucky Lottery Corp. v. Stewart,* 41 S.W.3d 860 (Ky.App.,2001) - Request under Open Records Act should be evaluated independently of whether requester is party or potential party to litigation. KRS 61.870 et seq.
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> *Kentucky Lottery Corp. v. Stewart,* 41 S.W.3d 860 (Ky.App.,2001) - Attorneys representing client in hearing against state. . . Commission could request disclosure of information concededly required to be made generally available under Open Records Act, despite claim that information was sought for discovery purposes and there was no provision for discovery in administrative cases. KRS 61.870 et seq.

26. Through this instant filing, the Petitioner moves this Court to issue the applicable mandate that the Commission be required to specify and identify any and all documents, materials and evidence that it received in the handling of the Petitioner's Complaint. As well as documents, materials and evidence the Commission relied upon in reaching its determination in Dismissal Order rendered. Stating with specificity and facts the reasons for the exemption exerted in its February 15, 2008 letter.

> *City of St. Matthews v. Voice of St. Matthews, Inc.,* 519 S.W.2d 811 (Ky.,1974) - When demand for inspection of public records is refused by custodian of the record, burden shall be upon custodian to justify the refusal of inspection with specificity. . . .(n. 3) Citizen is not required to show an interest such as would enable a person to maintain or defend a lawsuit as a prerequisite to his right to inspect a public record; overruling Fayette County v. Martin, 279 Ky. 387, 130 S.W.2d 838, and Courier Journal and Louisville Times Company v. Curtis, 335 S.W.2d 934 to extent they imposed such requirement.
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> *Cape Publications v. City of Louisville,* 191 S.W.3d 10 (Ky.App.,2006) - Judicial review of an agency's invocation of the privacy exemption of the Open Records Act is reviewed de novo, and requires that the agency prove disclosure would be a clearly unwarranted invasion of privacy. KRS 61.878(1?)(a).
>
> *Cape Publications v. City of Louisville,* 147 S.W.3d 731 (Ky.App.,2003) - Once a protectable privacy interest in information

> contained in a public record is established, proper application of the Open Records Act requires a comparative weighing of the antagonistic interests: the privacy interest versus the policy of openness for the public good. KRS 61.870 et seq.

27. The Commission in its February 15, 2008 correspondence is merely making "verbal" assertions to protection and citing statutes which has no legal or factual basis to sustain its argument and/or exemption asserted. Such mere assertions which are clearly prohibited as a matter of law. Thus, requiring the intervention and this Court exercise of supervisory authority to have the record of the Commission certified and presented for review and inspection by the Petitioner so that her Mandamus Brief may be prepared. The February 15, 2008 letter of the Commission does not remotely comply with the requirements under the Open Records Act, in that it is required to provide with specificity, particularity and detail information to meet the standard/compliance in the statutes/laws governing said matters to sustain the exemption asserted. Such dilatory tactic/act by the Commission is clearly prohibited by laws/statutes and a reasonable mind may conclude that said acts are willful and malicious in efforts of shielding/masking **"public corruption"** as well as civil and criminal actions.

> *Edmondson v. Alig,* 926 S.W.2d 856 (Ky.App.,1996) - Provision of Kentucky Open Records Act directing agency action where custodian of records believes that records are not subject to disclosure requires that custodian provide particular and detailed information in response to request for documents. KRS 61.880(1).

> *Edmondson v. Alig,* 926 S.W.2d 856 (Ky.App.,1996) - Response by county attorney to letter which sought disclosure of documents of which county was custodian under Kentucky Open Records Act *which stated only that information sought was exempt and gave statutory citation* **did not** even **remotely** *comply* with requirement under Act that custodian provide particular and detailed information, much less amount to substantial compliance. KRS 61.880(1).

28. The relief sought by the Petitioner of the Commission is relief mandated by statutes/laws. The action of the Commission in its failure to perform ministerial duties (**not** duties *discretionary* in nature, but **mandatory** as a matter of law/statute) and the Commission's failure to adhere to the statutes/laws under which it is governed, subjects said actions of the Commission to scrutiny and the Petitioner's right to bring a Mandamus action against it as well as request review of its record relating the Petitioner's Complaint filed with it.

> *City of Louisville v. Courier-Journal and Louisville Times Co.,* 637 S.W.2d 658 (Ky.App.,1982) - Internal investigative files of city police department were exempt from public disclosure as preliminary under open records law, but exemption would not extend to complaints which initially spawned the investigations. KRS 61.878(1)(g, h), (3).

29. The Writ of Mandamus action the Petitioner seeks to bring is timely

and the required pleading (Motion to Stay) has been filed with this Court to preserve said rights. Moreover, the Motion to Stay as well as this instant pleading provides this Court with additional evidence to support the Commission's willful and deliberate acts to obstruct these proceedings and/or justice in efforts of preventing the Petitioner from bring the Mandamus action she seeks. The Commission has willfully and with deliberate and malicious intent failed to provide the Petitioner with the record for purposes of *obstructing* justice, delaying/hindering proceedings, cover-up/mask their unlawful/illegal and unethical practices, to shield/mask discriminatory practices, to deprive the Petitioner equal protection of the laws and due process of laws, etc. Petitioner believes that the purpose upon which she seeks to bring Writ of Mandamus action, will yield and/or evidence the public/legitimate interest for said action. Furthermore, the relief the Petitioner seeks, will allow her to maintain and defend the Mandamus action sought and the record of the Commission is needed to accompany this end.

> *Department of Corrections v. Courier-Journal and Louisville Times,* 914 S.W.2d 349 (Ky.App.,1996) - Trial court's failure to make finding on issue of whether records requested pursuant to Open Records Act were willfully withheld by Department . . .was not brought to attention of trial court, and thus issue was waived. Rules Civ.Proc., Rule 52.02.

> *Fayette County v. Martin,* 130 S.W.2d 838 (Ky.,1939) - Mandamus directing Kentucky . . .Commission to permit city to examine records on a confidential basis only was proper, where city sought information to enable it to prosecute and maintain action against franchise tax paying company. Ky.St.1936, § 4114i-13; Ky.St.Supp.1939, § 4114h-15.

> *City of St. Matthews v. Voice of St. Matthews, Inc.,* 519 S.W.2d 811 (Ky.,1974) - Right to demand inspection of public records must be premised upon purpose which tends to advance or further a wholesome public interest or a legitimate private interest.

> *Fayette County v. Martin,* 130 S.W.2d 838 (Ky.,1939) - At common law every person is entitled to the inspection, either personally or by his agent, of public records, including legislative, executive, and judicial records, provided he has an interest therein which is such as would enable him to maintain or defend an action for which the document or record sought can furnish evidence or necessary information.

> *City of St. Matthews v. Voice of St. Matthews, Inc.,* 519 S.W.2d 811 (Ky.,1974) - Citizen is not required to show an interest such as would enable a person to maintain or defend a lawsuit as a prerequisite to his right to inspect a public record; overruling Fayette County v. Martin, 279 Ky. 387, 130 S.W.2d 838, and Courier Journal and Louisville Times Company v. Curtis, 335 S.W.2d 934 to extent they imposed such requirement.

LEGAL ARGUMENT

In support of this instant MTCCOA, the Petitioner further provides the following legal statements in support thereof:

I. MANDAMUS ACTION PERMISSIBLE:

20. State courts generally possess the power to issue mandamus, in the absence of statutory or constitutional restriction. Thus, unless constitutionally prohibited, a state court may issue mandamus with full and complete authority to compel the performance of an official's duty. Furthermore, a state court's power to issue mandamus will not be disturbed just because jurisdiction lies for appeal to a higher court. 52 Am. Jur.2d Mandamus § 9 – State Courts.

21. *Plaintiff need not pursue other remedies if they are effectively unavailable or if the agency to which an appeal must be brought is failing to act or frustrating the plaintiff's ability to obtain relief*. 52 Am. Jur.2d Mandamus § 31.

22. An appeal is not an alternate remedy to mandamus if it would be meaningless, the order from which relief is sought is nonappealable, or the party can show some special reason why it is inadequate. . . .An appeal is not a sufficient alternate remedy when the party's ability to defend itself has been severely compromised by the trial court's error. 52 Am. Jur.2d Mandamus § 32.

23. To constitute an alternate remedy, the other remedy must be adequate. The mere existence of another remedy, in and of itself, does not prevent a writ of mandamus from issuing. (*State ex rel. Wright v. Cohen,* 174 Ohio St. 47, 21 Ohio Op. 2d 294, 186 N.E.2d 618 (1992)). Furthermore, a technically available remedy will not preclude mandamus when the other relief is uncertain, tedious, burdensome, slow, inconvenient, inappropriate, or ineffective. . . The other remedy must be available against the defendant, not the third party, and must be one which will place the plaintiff in the same position had the requested performance been rendered. 52 Am. Jur.2d Mandamus (2. Necessity That Other Remedy Be Adequate) § 34.

24. Mandamus will only issue if the respondent, at the time of the application for mandamus, owes a duty to perform to the plaintiff. *Kavanaugh v. Chandler,* 255 Ky. 1182, 72 S.W.2d 1003, 95 A.L.R. 273 (1934). . . .Mandamus does not create duties but enforces established ones, and does not enlarge the scope of the duty in question. 52 Am. Jur.2d Mandamus § 46.

25. Mandamus only commands the performance of legal duties, not moral ones, of a public nature which are ***ministerial in character***. The duty must be imposed by law and must still exist at the time the writ is applied for. The law must only authorize the act sought to be enforced, but must require it to be done. It is necessary that the duty, to be enforceable by a writ of mandamus, be specific, clearly defined, and peremptory in its nature. 52 Am. Jur.2d Mandamus § 47 – Nature and Character of Enforceable Duties.

26. The discretion which cannot be controlled by mandamus is that discretion which the law has vested in the officer, to be exercised by him or her. The discretion must be exercised under the law and not contrary thereto, and it must not be arbitrary, vague, or fanciful but legal, regular, and sound discretion governed by rule and exercised under the established principles of law. Mandamus is a proper remedy if, in the attempted performance of discretionary acts, the official abuses the discretion so as to amount to a failure to do the act as the law requires, or if by a mistaken view of the law there has been no actual exercise of good faith of the judgment or discretion vested in the officer, or if an official acts so arbitrarily or capriciously that the court is justified in holding that no discretion was exercised at all . . . *If an official or political body, in making its decision,* ***is prompted solely by bias*** *and political reasons,* ***such a decision is an abuse of discretion***.. . . If there is no dispute of the factual issues entitling plaintiff to relief, mandamus will lie to compel the action according to law, for in that instance the act becomes purely ministerial and the duty to perform it is absolute. 52 Am. Jur.2d Mandamus § 51 – Abuse of Discretion Required.

27. Mandamus compels the performance of ***ministerial*** *acts* or *duties* ***only***. An act is "ministerial" when the law clearly spells out the duty to be performed by the official with sufficient certainty that nothing is left to the exercise of discretion. Stated another way, it is an act that an official is required to perform upon a given state of facts in a prescribed manner in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning the propriety or impropriety of the act to be performed. 52 Am. Jur.2d Mandamus § 52 – Ministerial Duties.

28. Mandamus will issue in a proper case to compel the performance of ministerial duties by other state officers, including administrative agencies and boards. 52 Am. Jur.2d Mandamus § 114 – Other State Officers.

29. The performance by the plaintiff of conditions precedent to the imposition of a duty on the respondent is essential to give rise to the right to a writ of mandamus. . . .Mandamus will not issue until everything has been done that is necessary to make it the defendant's ministerial duty to act.. . .performance will be excused if it was prevented by the respondent. 52 Am. Jur.2d Mandamus § 54 – Duty Subject to Performance of Conditions Precedent.

30. Mandamus can compel the performance of continuing duties such as in the case of future action. For example, mandamus will require the performance of a continuing duty that a predecessor in office failed or refused to perform. 52 Am. Jur.2d Mandamus § 55 – Continuous Course of Conduct or Acts.

31. Generally speaking, for the purposes of mandamus a "default" is the failure of the respondent to perform a legal duty; the writ will not issue unless there has been a breach or dereliction of duty by the respondent. The purpose of the writ is to compel action by the unwilling and it will not issue if the respondent is willing to perform the duty or performance is being rendered by the respondent or has been rendered. 52 Am. Jur.2d Mandamus (C. Default or Dereliction of Duty) § 59.

32. In order for a writ of mandamus to issue to compel a public functionary or body to perform a particular act, it must be shown that there is a failure to perform a nondiscretionary act, and such act must be one which the law specifically orders as a duty arising out of office . . . Mandamus is an appropriate relief to restrain public functionaries from doing what they know is an illegal act. 52 Am. Jur.2d Mandamus § 91 – Requirement of Nondiscretionary Act Arising From Legal Duty.

33. The writ does not reach the office, but is directed against the officer to require the performance of a required legal duty. . . . In mandamus proceedings against public officers, it is required that there be some officer or officers in being who have the power and whose duty it is to perform the act. If there are no such officers, the writ cannot be effective and the mandate of the court cannot be enforced. 52 Am. Jur.2d Mandamus § 92 – Mandamus as Affecting Officer, Not Office.

34. In accordance with the generally prevailing rule, that except to compel its exercise, or to correct an arbitrary or fraudulent exercise of discretion, or an exercise of discretion based on mistaken view of the law, mandamus does not lie to review or revise the exercise of discretion by . . . governing body, or to direct the manner in which it can be exercised. Stated alternately, mandamus will not lie to compel action by a . . . officer where there is no ministerial duty of such officer to take a particular action. ***However, where it is clear that the duty is ministerial, mandamus will lie to compel performance.*** 52 Am. Jur.2d Mandamus § 123 – Discretionary or Ministerial Functions.

35. Mandamus lies to compel agencies to proceed to exercise the powers entrusted to them, and to perform ministerial acts. It also lies to enforce the rules and regulations of an administrative agency. . . . a differentiation is made between a writ of administrative mandamus, which provides juridical review of an administrative action, and the general law of mandamus, although the general rules may continue to apply to a writ of administrative mandamus. . . Although mandamus has traditionally been merely a proceeding to compel the performance of ministerial duties, it is nevertheless true that in a number of jurisdictions, sometimes by virtue of statute, the writ may be used in a proper case for the purpose of reviewing the final acts and decisions of such an agency. . . An act by an administrative agency in excess of the power conferred on it by the state constitution or by statute is void, and mandamus will lie to correct, nullify or rescind such acts. However, mandamus is not an appropriate remedy to secure an investigation of the entire past conduct of an administrative body over an indefinite period of time, to classify what they have done as legal or illegal, to set aside illegal action, to order them generally in the future performance of their duties, and to determine whether they have earned their pay. 52 Am. Jur.2d Mandamus (E. Administrative Bodies, Boards, or Commissions) § 124.

36. Where a case is stated within the jurisdiction and powers of an administrative agency, it is the duty of that agency to entertain it, and in a proper case mandamus will issue to compel it to do so by hearing the cause on the merits. . . . A public board cannot evade its duties by adjourning without taking the action required by law, and as a general rule mandamus will lie to compel it to reassemble and perform its duty. 52 Am. Jur.2d Mandamus § 125 – Compelling Exercise of Power.

37. Where there is no other adequate remedy, mandamus will issue to enforce performance of plain and imperative duties of a ministerial character imposed by law upon administrative bodies. . . . It can, however, be used to compel the agency to follow its own rules. **Mandamus is the *appropriate remedy* where an administrative official has <u>been *guilty* of *undue delay*</u>**. 52 Am. Jur.2d Mandamus § 126 – Compelling Performance of Act.

38. A court may issue a writ of mandamus only upon the final decision made as result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of the facts is vested in an inferior tribunal, corporation, board, or officer. In others, before appealing to the courts for mandamus, it may be necessary to seek a hearing before the board or commission against which the writ is sought, unless it is apparent from the facts and circumstances that any recourse to the board or commission would be unavailing. . . . Mandamus is used to review an adjudicatory decision when an agency is not required to hold an evidentiary hearing. 52 Am. Jur.2d Mandamus § 127 – Necessity of Resort to Administrative Hearing or Appeal.

39. A writ of mandamus will not issue to control the judgment or discretion of an agency or board. Unless there has been a clear abuse of discretion, or the action of the agency was arbitrary, capricious, or prompted by wrong motives, where judgment or discretion is reposed in an administrative agency and has been exercised by that agency, courts are powerless to compel a different conclusion by the use of the writ of mandamus. 52 Am. Jur.2d Mandamus § 128 – Scope of Review Under Writ of Mandamus; Clear Abuse of Discretion.

40. Mandamus may issue to enforce a mandatory duty resting upon a public officer to institute or consent to the institution of particular judicial proceedings. . . 52 Am. Jur.2d Mandamus § 130 – Institution of Judicial Proceedings.

41. The duties resting upon public officers with respect to making and keeping public records may be coerced by mandamus insofar as they are purely ministerial. A public official must have a clear duty to maintain or provide records in order to subject him or her to mandamus for the failure to do so. 52 Am. Jur.2d Mandamus § 180 – When Mandamus is Available, Generally.

42. Although mandamus may remain valid as a remedy, the passage of federal and state versions of Freedom of Information Acts or similar public records access statutes, under which persons seeking access to public information are entitled to make a request for such information, may statutorily alter the remedies available for a refusal by a public official to comply with the Act or other statute. Under some formulations of these statutes, a writ of mandamus is explicitly made available when a person is denied the rights and privileges conferred under the provisions of the statute, as the disclosure of public records is deemed a ministerial act under such statutes. However, initial resort to the Freedom of Information Act is a necessary prerequisite to an action seeking a writ of mandamus, as the Act constitutes and alternate adequate remedy for the party seeking information or disclosure of public records. . . .the request for disclosure or action under the Act constitutes the demand

for performance of the duty. The statute may also condition the remedy upon a demand and failure to provide specific, sufficient reasons for nondisclosure. 52 Am. Jur.2d Mandamus § 181 – Relationship to Freedom of Information Acts; Public Records Access Statutes.

43. Particular records may be expressly exempted from mandatory disclosure under a Freedom of Information or other public access records access act; where this is so and a mandamus proceeding is brought to compel disclosure, the burden is upon the non-disclosing public official to prove that the records which it refused to provide fall within such an exception. 52 Am. Jur.2d Mandamus § 182 – Exemptions From Disclosure.

44. Mandamus will issue in a proper case to enforce the duty of a public official to disclose public records, to deliver a copy of a record or document, or to verify and approve facts appearing on public records. 52 Am. Jur.2d Mandamus § 184 – Disclosure or Verification of Contents of Records.

45. Mandamus will issue in a proper case to enforce the duty of a public official to surrender public records to the person entitled thereto. . . expungement will not be allowed where the mandamus petition seeks to adjudicate due process or equal protection grounds to expunge the record, rather than to execute a ministerial duty. 52 Am. Jur.2d Mandamus § Surrender, Destruction, Cancellation, or Correction.

46. Within certain limitations and under certain conditions, interested persons have the right to inspect public records and documents for a legitimate purpose, and the right to such inspection may, in a proper case and at the instance of one who shows the requisite interest, be enforced by mandamus . . . The writ lies to enforce statutory duty to furnish copies of public records, and to permit the copying or photographing of records, or the making of memoranda therefrom. 52 Am. Jur.2d Mandamus (2. Examination, Inspection, and Copying) § 186.

47. Public records of various types are subject to the right to inspection, and hence mandamus will lie to compel inspection of these public records. 52 Am. Jur.2d Mandamus § 187 – Particular Types of Records, Sealed Records.

48. The remedy will be awarded only at the instance of one who has the necessary interest, and will be withheld where no such interest is shown. Although in some jurisdictions it is sufficient for the petitioner or relator to show merely that he or she is a citizen and resident, without showing a personal interest or grievance, . . . The person seeking the writ must show more than an abstract right, and must allege a proper purpose. (fn. 1 – An attorney representing clients in damage suits arising out of motor vehicle accidents, who has been denied permission to inspect records of reports of motor vehicle accidents, declared by law to be open to inspection to the public, has sufficient interest to maintain in his own name a petition for a writ of mandamus compelling the commissioner of motor vehicles to open such records to his inspection. *Pressman v. Elgin,* 169 A.L.R. 646) (fn. 3 – *Butcher v. Civil Service Com'n of City of Philadelphia,* 61 A.2d 367 – holding that refusal to permit inspection is breach of public duty, and that the relator must show special injury by breach of such duty) 52 Am. Jur.2d Mandamus § 189 – Who Has Standing to Seek.

49. Mandamus is a remedy designed to compel, rather than to prevent, specific acts on the part of public officials entrusted by law with the duty of performing them. So, although the writ will issue to compel the custodian of public records to allow inspection thereof, it is not an appropriate remedy to prevent such official from permitting inspection, particularly where the officer has authority, in the proper administration of his office, to grant the right. 52 Am. Jur.2d Mandamus § 191 – Mandamus to Prevent Inspection.

50. Mandamus is appropriate where the subject public officer or entity has a clear and nondiscretionary duty to perform the duty which is the subject of the writ. . . A clear legal right to the relief sought must be established before mandamus to compel such relief will be made available to a complainant. . . . where mandamus is sought to compel the public entity to perform a nondiscretionary duty, the person seeking mandamus must first make an express and distinct demand on the public entity to perform the duty, and the public entity must refuse performance, as mandamus will not issue to compel a public official to do what he or she has not been requested to do. . . . where it is clear that a demand, if made, will result in a refusal to perform, such demand is not a prerequisite to seeking mandamus, . . . a writ of mandamus will not lie to compel the performance of an act which the respondent shows a willingness to perform without coercion. 52 Am. Jur.2d Mandamus § 278 – Discretionary and Ministerial Duties.

51. Mandamus is the appropriate remedy to compel a lower court to take such action, not discretionary in character, as may be required by the statutes and the practice to obtain appellate review. To that end, the writ may be granted to compel a subordinate tribunal to proceed to a final judgment or decree in the cause; . . . to furnish or approve a record; to furnish a transcript, statement of facts, or accurate report of proceedings. 52 Am. Jur.2d Mandamus § 345 – Appeal, Error, or Other Review.

52. It has been held that a petition for a writ of mandate to compel action by a governmental agency should name as respondent the decision-making authority of the governmental agency. Similarly, courts have held that in mandamus proceedings to compel a body of persons or officials to perform an act, the persons or officials should be named individually. *Bruner v. City of Danville,* 394 S.W.2d 939 (Ky. 1965); *Lewis v. Board of Councilmen of Frankfort,* 305 Ky. 509, 204 S.W.2d 813 (1947) – Individual members of the board should be made parties to a mandamus proceeding against a board of councilmen. [52 Am. Jur.2d Mandamus § 396 – Mandamus to Body or Board of Officials.

53. While a person seeking a mandamus writ does not have to prove the case at the pleading stage, he or she does bear the burden of pleading sufficient facts to support the petition, complaint or other pleading. To meet that burden a petitioner seeking mandamus relief may be required to incorporate documentation filed in the trial court to the extent necessary to understand the pleadings and justify relief, though supporting documents may not be required if the pleader's presentation is not misleading and was sufficiently complete to permit informed review. 52 Am. Jur.2d Mandamus § 414 – Required Documentation.

54. The prayer for relief in a petition for mandamus should be certain, and should ask for the performance of a definite duty which arises under circumstances shown to exist and which is imposed by existing law. The prayer should specify exactly what the petitioner wants – nothing more and nothing less. 52 Am. Jur.2d Mandamus § 415 – Prayer.

II. RECORDS OF PUBLIC ACTS AND WRITINGS:

55. A public record is sometimes defined as a record required by law to be kept, or necessary to be kept, in the discharge of duty imposed by law, or directed by law, to serve as a memorial and evidence of something written,, said, or done; or a writing filed in a public office. . . . A record is public if, by law or regulation, it is filed in a public office and required to be kept there. Also, if a written record of the transactions of a public officer in his or her office is a convenient and appropriate mode of discharging the duties of the office, it is not only the officer's right, but also his or her duty, to keep that memorial, whether expressly required so to do or not; when kept, it is a public document that belongs to the office, rather than to the officer. Thus, a record is public if it is kept pursuant to the official duties of a particular officer, even if it is not specifically mandated by a statute. However, the determination as to what records must be maintained by a public officer is the *prerogative of the legislature*. *State v. Doe,* 588 S.W.2d 549 (Tenn. 1979). 66 Am. Jur.2d Records and Recording Laws § 1.

56. An officer who has public records in his or her charge is the mere custodian of those records and is subject to the will of the state allowing any person the right of access to them; the records are not the private property of the officer. 66 Am. Jur.2d Records and Recording Laws § 5 – Ownership of Public Records.

57. A historically strong and persuasive public policy requires liberality in the right to examine public records under the common law, *and there are many* federal and state statutes codifying this right. The public's right to access to public records is also guaranteed by the freedom of the press and due process clauses of the United States Constitution, but the common-law right to inspect public records predates the Constitution and applies in both criminal and civil cases. Thus, if there is no contrary statute and countervailing public policy, the right to inspect public records must be freely allowed. A citizen has a fundamental right to have access to public records, and his or her right to kn0w is the rule . . . the right to inspect public records extends only to those who show some special interest in them . . . If a custodian of a public record refuses a citizen's demand for inspection of record, the burden is on the custodian to justify the refusal of inspection with specificity. *City of St. Matthews v. Voice of St. Matthews, Inc.,* 519 S.W.2d 811 (Ky. 1974). 66 Am. Jur.2d Records and Recording Laws § 17.

58. If the person seeking inspection then files suit to compel inspection and the custodian depends upon the ground stated in the refusal, the trial judge should examine the record in camera to determine whether the harm likely to result to the public interest by permitting the inspection outweighs the benefit to be gained by granting the inspection. (In an action in which a newspaper sought a writ of

mandamus to compel a local board of education to release information regarding a settlement it had reached in recent litigation, the writ was granted, because settlement agreements entered into by a governmental unit are public records. *State ex rel. Sun Newspapers v. Westlake Bd. Of Edn.*, 76 Ohio App. 3d 170, 601 N.E.2d 173, 78 Ed. Law Rep. 88 (1991)). 66 Am. Jur.2d Records and Recording Laws § 21 – Remedies.

59. Under the common law, every person is entitled to inspect, either personally or by his or her agent, public records, including legislative, executive, and judicial records, provided that he or she has an interest in them that would enable him or her to maintain or defend an action for which the document or record sought can furnish evidence or necessary information. In theory, the right to inspect public records is absolute, yet in practice it is so limited by the remedy necessary for its enforcement that it can be denominated only by "qualified right." Though it has been held that the common-law requires that the person asking inspection must have an interest in the record or paper of which inspection is sought (*City of St. Matthews v. Voice of St. Matthews, Inc.*), an interest as citizen or taxpayer has been held to be a sufficient interest. . . . it has been held that a showing of interest such as would enable a person to maintain or defend a lawsuit is not a prerequisite to the right to inspect a public record (*Id.*), that access to government records does not depend on the purpose for which the records are sought, and that any person may inspect a public record. 66 Am. Jur.2d Records and Recording Laws (2. Persons Entitled to Inspect) § 22.

60. The right to inspect public records usually extends only to one who has a legitimate purpose that is not adverse to the public interest. Thus, no one has a right under the common law to examine or obtain copies of public records from mere curiosity for the purpose of creating public scandal, form motives merely speculative, or to further any improper or useless end or purpose. 66 Am. Jur.2d Records and Recording Laws § 25 – Purpose. (also see *City of St. Matthews*).

61. The common-law right to inspect public records extends to any document made by public officers in the exercise of public functions and, thus, encompasses a far broader range of documents than a right-to-know statute. "Public records," for the purpose of the common-law right of inspection, have been defined as all records maintained by state, county, or municipal government as evidence of the manner in which the business of that unit of government has been conducted (*City of St.* Matthews) or the government document created and kept for the purpose of memorializing or recording an official action, decision, statement, or other matter of legal significance, broadly conceived. The problem of whether a record should be open to public inspection cannot be solved by applying a definition of "public record" that is borrowed from cases involving questions other than the right of inspection, in which different considerations are present. Whether a document is a public record that may be inspected is a question to be resolved by balancing the interest of the citizen in knowing what the servants of the government are doing and the citizen's proprietary interest in public property against the interest of the public in having the business of the government carried on efficiently and without undue interference. *Even if the countervailing interests of confidentiality, privacy, or the best interests of the state override the public's right to inspect certain documents, a public inspection need not be concluded entirely if other alternatives exists, such as deleting specific personal identifying information*. . . . **The burden *is on the agency to explain* why**

the records sought *should not* be furnished; ultimately, it is for the court to decide whether the explanation is reasonable and outweighs the possible harm to the public from denying the inspection. *Writings coming into the hands of public officers* in connection with their official functions should generally be **accessible to members of the public** *so that there will be an opportunity to* ***determine whether those entrusted with the affairs of the government are*** *honestly, faithfully, and competently performing their functions as public servants.* To constitute a public record available for inspection, a writing need only constitute a convenient, appropriate, or customary method of discharging the duties of the office by public officials; it need not be a document that is required by law to be kept as a memorial of official action. . . . The issue of access to public records should not be determined by those who handle them, but by the role the records play in our system of government and legal process and, particularly, by whether some substantive legal provision grants the right of access. . . The common-law right of access to public records is not limited to materials akin to court documents. 66 Am. Jur.2d Records and Recording Laws (3. Records to Which the Inspection Right Extends) § 26.

62. The common-law right to inspect state records that are of such a nature as to be of interest to the public in general is a right that belongs to each citizen and taxpayer of the state. 66 Am. Jur.2d Records and Recording Laws § 29 – State Records.

63. The right of inspection does not extend to all public records or documents; public policy demands that some records, although of a public nature, must be kept secret and free from common inspection. For example, under the common-law executive privilege, government department heads may prevent the disclosure of documents within their control if nondisclosure would serve the public interest. This privilege is not absolute, however; the government's interest in maintaining confidentiality must be weighed against the interest of those seeking discovery of the material. . . .a person who sends a communication to a public officer relating to public business cannot make his or her communication private and confidential simply by labeling it as such. Even if the disclosure of communications marked "confidential" will prevent the sending of such communications in the future, to the detriment of the public interests, this is not sufficient ground for refusing to allow such communications to be inspected by one having sufficient cause. 66 Am. Jur.2d Records and Recording Laws § 32 – Secret and Privileged Matters.

64. A court may require documents to be produced and may conduct its own examination of them, in camera, to determine whether the documents are confidential and privileged and whether their disclosure would be detrimental to the best interests of the state. (*Freeman v. Guaranty Broadcasting Corp.*, 498 So.2d 218 (1986) – In a defamation action arising from a television program that implicated the plaintiff in drug dealing and other illegal activity, the trial court erred in granting the police protective orders to prevent disclosure of the investigative reports subpoenaed by the defendant to prove the plaintiffs illegal acts, because the trial court had failed to conduct a detailed in camera inspection of the reports to determine if the privileges asserted by police were valid.)

65. Decision of appeals referee in an unemployment insurance claim case is a public record and open to public inspection as evidence of final agency action. Denial response not following mandate of KRS 61.880 is inadequate to deny request for inspection. OAG 83-352.

PRAYER and RELIEF SOUGHT

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that the Kentucky Court of Appeals grant the relief sought through this instant *Motion to Compel Court of Appeals' Intervention and/or Exercise of Supervisory Power*:

a. Issue mandate accordingly requiring the Commission to certify the record in regards to Case Nos. KCHR NO. 1423-H and HUD NO. 04-08-0007-8, and to forward said record to this Court for its review and inspection to determine whether the Petitioner is entitled to the record and/or what portions (if not the entire record) the Petitioner is entitled to, to aid and/or assist her in the preparation of her Mandamus Brief;

b. That this Court issue the appropriate mandate cautioning the Commission and other parties to this action of Rule 11 sanctions/relief for any pleadings filed in violation of Rule 11 of the Kentucky Rules of Civil Procedure and/or the Code of Professional Conduct;

c. Petitioner request sanctions in the amount of $10,000.00 for pleadings submitted by the Commission (and each Respondent) and/or Real Parties of Interest for pleadings submitted in response to this instant Motion that is uncertified in accordance with Rule 11 of the Kentucky Rules of Civil Procedure; and

d. Any and all applicable relief known to this Court to grant the relief sought herein.

This 5th day of **April, 2008.**

Respectfully Submitted,

Denise Newsome
Post Office Box 14731
Cincinnati, Ohio 45250
(513) 680-2922

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the forgoing pleading was mailed via U.S. Mail first-class mail on:

Morgan G. Ransdell, Managing Attorney
Kentucky Commission on Human Rights
332 West Broadway, 7th Floor
Louisville, Kentucky 40202
ON BEHALF OF:
HENRY CURTIS, CHAIRPERSON
JOHN J. JOHNSON, EXECUTIVE DIRECTOR
LIANDRA GOATLEY, ENFORCEMENT OFFICER
KENTUCKY COMMISSION ON HUMAN RIGHTS

Honorably Jack Conway and/or Attorney General
Office of the Attorney General
700 Capitol Avenue, Suite 118
Frankfort, Kentucky 40601
ATTORNEY GENERAL

James M. West, Esq.
Martin & West, PLLC
157 Barnwood Drive, Suite 201
Edgewood, Kentucky 41017
ATTORNEY FOR DEFENDANTS

Dated this 5th day of **April, 2008**.

Denise Newsome
DENISE NEWSOME

COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY COMMISSION ON HUMAN RIGHTS

IN THE MATTER OF

DENISE NEWSOME — COMPLAINANT

vs.

KCHR COMPLAINT NO. 1423-H
HUD CASE NO. 04-08-0007-8

GARY M. MARTIN, BERNICE MARTIN, DENNIS DONNELLAN, AND BETTY DONNELLAN – D/B/A GMM PROPERTIES — DEFENDANTS

COMPLAINANT'S NOTICE TO FILE WRIT OF MANDAMUS ACTION[1]

TO: Henry Curtis, Chairperson
John J. Johnson, Executive Director
LiAndra Goatley
Kentucky Commission on Human Rights
332 West Broadway, 7th Floor
Louisville, Kentucky 40202

Honorably Jack Conway and/or Attorney General
Office of the Attorney General
700 Capitol Avenue, Suite 118
Frankfort, Kentucky 40601
ATTORNEY GENERAL

James M. West, Esq.
Martin & West, PLLC
157 Barnwood Drive, Suite 201
Edgewood, Kentucky 41017
ATTORNEY FOR DEFENDANTS

PLEASE TAKE NOTICE that in connection with the above captioned matter as referenced above, the undersigned, who is the Complainant in this action before the Kentucky Commission on

[1] Boldface, italics and/or underline added for emphasis.

Human Rights ("Commission"), will file an "ORIGINAL" *Writ of Mandamus* action in the applicable court pursuant to CR 76.36:

> **CR 76.36 Original Proceedings in Appellate Court -** *Petition for Relief:* Original proceedings in an appellate court may be prosecuted only *against* a judge or **agency** whose decisions may be reviewed as a matter of right by that appellate court. All other actions must be prosecuted in accordance with applicable law. . .

and/or any other statute/laws in which Complainant believes applicable to address relief available to her, within the time allowed by laws, requesting "FINDINGS and FACTS" in accordance with statutes/laws governing said matters. Moreover, the legal conclusion, evidence and factual findings upon which the Commission's January 22, 2008 Dismissal Order (attached hereto) is founded and/or based. Requesting remand and/or the applicable relief afforded under the applicable statutes to address all issues raised in the typewritten Complaint submitted for filing by the Complainant on or about September 20, 2007, in that the Commission's Dismissal Order is not in compliance with the statutes/laws governing said matters and it is difficult to determine upon what facts, evidence and legal conclusions it's Dismissal Order is based. Furthermore, the Mandamus action will be brought to require the Commission to perform its duties mandated by statutes/laws upon which said agency was created, so that Complainant and/or reviewing body may determine whether such Dismissal Order is arbitrary and/or capricious, contrary laws, etc.

Based on the Kentucky Court of Appeals recent decision in Case No. 2007-CA-001589-MR, and assurance that their decisions are "firmly rooted in the law," I expect the same of the Dismissal Order entered by the Commission in this action. Therefore, an original action in Compliance with the statutes/laws will be brought in the applicable court demanding the *mandatory* relief granted through *Writ of Mandamus* actions. Copy of said order is attached for your review.

In preparation of the Writ of Mandamus Brief that will be prepared for mandamus action. I will need the following forward to me **within the next ten (10) days**:

1) The original record sent to me via *Certified Mail – Return Receipt* requested at the following address:

Denise Newsome
Post Office Box 14731
Cincinnati, Ohio 45250

2) These documents will need to be **BATES STAMPED** (or applicable numbering for reference purposes in the Mandamus Brief) – providing of this information will also aid in determining what evidence the Commission had before it and whether or not the Dismissal Order is supported by facts, evidence and legal conclusion, whether the investigation was handled in compliance with the laws and affording Complainant with sufficient information (i.e. copy of written response provided by Defendants or was information withheld to shield illegal actions and or information by law the Complainant is entitled to and whether she was provided with written response and afforded fair and equal opportunity to respond in compliance with statutes/laws and the Constitution – whether matter handle in compliance with KRS 344.600 – emphasis on 344.600(1)(d)); and

3) These documents will need to be accompanied by a **"CERTIFICATE OF AUTHENTICITY"** verifying that this is the entire record and/or statements required in said Certificate in accordance with the statutes/laws governing said matters. Upon completion I will return the file to the Commission.

PLEASE TAKE NOTICE, I will request reimbursement for the costs/fees associated with having to bring this action. The Commission was timely, properly and adequately placed on notice that the information (facts, evidence and legal conclusion upon which findings are based) was requested by the Complainant prior to its January 22, 2008 Dismissal Order. Therefore, a reasonable mind may conclude that the Commission's failure to comply with said request may be deemed arbitrary, capricious and/or ill motivated, etc.

This **24th** day of **January, 2008**.

Respectfully Submitted,

Denise Newsome
Post Office Box 14731
Cincinnati, Ohio 45250
(513) 680-2922

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the forgoing pleading was mailed via U.S. Mail first-class mail on:

John J. Johnson, Executive Director
LiAndra Goatley
Kentucky Commission on Human Rights
332 West Broadway, 7th Floor
Louisville, Kentucky 40202

Honorably Jack Conway and/or Attorney General
Office of the Attorney General
700 Capitol Avenue, Suite 118
Frankfort, Kentucky 40601
ATTORNEY GENERAL

James M. West, Esq.
Martin & West, PLLC
157 Barnwood Drive, Suite 201
Edgewood, Kentucky 41017
ATTORNEY FOR DEFENDANTS

Dated this **24th** day of **January, 2008.**

Denise Newsome

DENISE NEWSOME

KENTUCKY COMMISSION ON HUMAN RIGHTS

Steven L. Beshear
Governor

February 6, 2008

The Heyburn Building
332 West Broadway, 7th Floor
Louisville, Kentucky 40202
Phone (502) 595-4024
Toll Free 1-800-292-5566
Fax (502) 595-4801
TDD (502) 595-4084
http://kchr.ky.gov

Denise Newsome
PO Box 14731
Cincinnati, OH 45250

Re: Response to Open Records Request of Denise Newsome
Received on January 28, 2008
Walter Combs v. Consolidated Biscuit Company
Lucy McKossic v. Consolidated Biscuit Company

Dear Ms. Newsome:

After review of the Complainant's Notice to File Writ of Mandamus Action, the Commission is processing your request for records. Though the Kentucky Open Records Act generally requires a response within three business days following receipt of an open records request, the Commission requires additional time, through and including Friday, February 15, 2008, in which to provide its response. Again I apologize for the delay.

Sincerely,

Erin Spalding
Docket Coordinator

EXHIBIT B

KENTUCKY COMMISSION
ON HUMAN RIGHTS
The Heyburn Building, 7th Floor
332 West Broadway
Louisville, Kentucky 40202

EXHIBIT
2

KENTUCKY COMMISSION
ON HUMAN RIGHTS

Denise Newsome
PO Box 14731
Cincinnati, OH 45250

2-19

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KENTUCKY COMMISSION ON HUMAN RIGHTS

Steven L. Beshear
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John J. Johnson
Executive Director

February 15, 2008

Denise Newsome
PO Box 14731
Cincinnati, OH 45250

Re: Response to Open Records Request of Denise Newsome
Received on January 28, 2008
Denise Newsome v. GMM Properties
KCHR No. 1423-H
HUD Charge No. 04-08-0007-8

Dear Ms. Newsome:

This correspondence is a response on behalf of the Kentucky Commission on Human Rights to the attached open records request received from you on January 28, 2008. The Commission construes your request to seek all documents contained in the agency case files pertinent to KCHR Complaint No. 1423-H, HUD Charge No. 04-08-0007-8.

Pursuant to legal provisions stated below, and noting your role as the complainant, the Commission grants with your request in part, and denies your request in part. In accordance with the Kentucky Open Records Act, enclosed are true copies of all materials available for inspection by you that are contained in the Commission's files pertinent to KCHR Complaint No. 1423-H, HUD Charge No. 04-08-007-8.

KRS 61.878(1)(l) authorizes public agencies to withhold records made confidential by enactment of the General Assembly. KRS 344.250(6) provides:

> It is unlawful for a commissioner or employee of the commission to make public with respect to a

> particular person without his consent information obtained by the commission pursuant to its authority under this section except as reasonably necessary to the conduct of a proceeding under this chapter.

As stated in KRS 344.990, any person who willfully violates KRS 344.250(6) is guilty of a misdemeanor.

In OAG 85-5, the Attorney General construed KRS 344.200 and KRS 344.250 to exempt the vast bulk of the agency record from public inspection, except in instances where the evidentiary hearing has already been held. *See also*, OAG 84-376. In such instances, the hearing transcript and the evidentiary record would be subject to inspection under the open records law. The administrative proceeding arising from KCHR Complaint No. 1423-H, and HUD Charge No. 04-08-007-8, was dismissed with prejudice on January 22, 2008. The dismissal occurred subsequent to the completion of the investigative phase of the administrative proceeding, but prior to the initiation of an adjudicatory proceeding that follows a finding of probable cause. KRS 344.210(1). In accordance with the foregoing statutory provisions, the Commission must decline to disclose certain investigative records obtained or compiled by the Commission pursuant to its authority under KRS Chapter 344.

The Commission also relies upon KRS 61.878(1)(i) and 61.878(1)(j). The first of these provisions exempts from mandatory disclosure preliminary drafts, notes, and correspondence with private individuals other than correspondence that is intended to give notice of final action of a public agency. Similarly, KRS 61.878(1)(j) exempts from mandatory disclosure preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended. Notice of the final action taken with respect to KCHR Complaint No. 1423-H, and HUD Charge No. 04-08-0007-8, is included in the materials that you have been provided. Notes and memoranda prepared or compiled by the investigator do not bind the agency and are preliminary to the adjudicatory proceeding. In accordance with the foregoing sections, the Commission declines to disclose the preliminary drafts, preliminary recommendations, preliminary memoranda, notes, and correspondence with private individuals.

Your request seeks documents that are withheld in accordance with the Kentucky Open Records Act. Your request also seeks the attached documents that are disclosed in accordance with the Kentucky Open Records Act.

Sincerely,

Erin Spalding

Erin Spalding
Docket Coordinator

Enclosures

FOR IMMEDIATE RELEASE
October 8, 2007
3:00 PM

CONTACT: Corporate Crime Reporter
202.737.1680
russell@nationalpress.com

Louisiana Most Corrupt State in the Nation, Mississippi Second, Illinois Sixth, New Jersey Ninth

October 8– Louisiana is the most corrupt state in the nation.

That's according to an analysis of government data released today by Corporate Crime Reporter.

Louisiana (1), Mississippi (2), Kentucky (3), Alabama (4) and Ohio (5) are the top five most corrupt states in the country, according to the analysis.

Rounding out the top ten are Illinois (6), Pennsylvania (7), Florida (8), New Jersey (9), and New York (10).

"If you type the word 'corruption' into Google News, the vast majority of news stories that come up are from overseas," said Russell Mokhiber, editor of Corporate Crime Reporter, a print weekly legal newsletter based in Washington, D.C. "But public corruption is booming right here in the USA."

"There have been more than 20,000 public officials and private citizens convicted of public corruption over the past two decades," Mokhiber said. "That's an average of 1,000 a year for the last twenty years."

Corporate Crime Reporter looked at the 35 most populous states in the nation. (The fifteen states with population of under two million were not included in the analysis.)

The ranking is based on data from the Justice Department's Public Integrity Section's 2006 report – which was made public just last week.

The 2006 Justice Department report contains a compilation of all federal corruption convictions by state over the past decade.

"We added up the total convictions for each state from 1997 to 2006," Mokhiber said. "We then calculated a corruption rate for each state, which we defined as the total number of public corruption convictions from 1997 to 2006 per 100,000 residents."

Here are the 35 most populous states ranked by their corruption rate:

Louisiana (1)(7.67), Mississippi (2)(6.66), Kentucky (3)(5.18), Alabama (4)(4.76), Ohio (5)(4.69), Illinois (6)(4.58), Pennsylvania (7)(4.55), Florida (8)(4.47), New Jersey (9)(4.32), New York (10)(3.95).

Tennessee (11)(3 68), Virginia (12)(3.64), Oklahoma (13)(2.96), Connecticut (14)(2.80), Missouri (15)(2.79), Arkansas (16)(2.74), Massachusetts (17)(2.66), Texas (18)(2.44), Maryland (19)(2.31), Michigan (20)(2.14).

Georgia (21)(2.13), Wisconsin (22)(2.09), California (23)(2.07), North Carolina (24)(1.96), Arizona (25)(1.88), Indiana (26)(1.85), South Carolina (27)(1.74), Nevada (28) (1.72), Colorado (29)(1.56), Washington (30)(1.52).

Utah (31)(1.4117), Kansas (32)(1.4109), Minnesota (33)(1.24), Iowa (34)(0.91), Oregon (35)(0.68).

Mokhiber warned that the study has its limitations.

"The Justice Department is reporting only public corruption convictions that result from a federal prosecution," Mokhiber said. "Convictions that result from a prosecution pursued by state district attorneys or attorneys general, for example, are not included in the Justice Department statistics. But the vast majority of public corruption prosecutions – perhaps as many as 80 percent – are brought by federal officials."

"Also, public officials in any given state can be corrupt to the core, and if a federal prosecutor doesn't have the resources or the sheer political will to bring the case and win a conviction, the public corruption will not be reflected in the Justice Department's data set," Mokhiber said.

Mokhiber said that in the most corrupt states, corruption is undermining public trust in politicians and government.

He cited a Monmouth University/Gannett New Jersey poll released last week which found that New Jersey residents are increasingly suspicious of their politicians.

The poll found 60 percent of residents say there is "a lot" of corruption in the state, up from 34 percent four years ago.

The poll also found that New Jerseyans think 60 percent of legislators are willing to sell out to lobbyists, up from 52 percent four years ago.

Mokhiber said he thought it was a good sign that citizens groups, like the Better Government Association (BGA) of Chicago, were organizing around the issue of public corruption -- even giving awards to corruption fighters.

Later this month, for example, BGA will present its annual Civic Achievement Award jointly to the U.S. Attorney's office in Chicago and the Chicago Division of the Federal Bureau of Investigation for rooting out corruption in northern Illinois.

Keynote speaker at the October 25, 2007 event?

U.S. Attorney Patrick Fitzgerald.

###

BEFORE THE KENTUCKY COMMISSION ON HUMAN RIGHTS

IN THE MATTER OF

DENISE NEWSOME — COMPLAINANT

vs.

DOCKET NO. _____

COMPLAINT

DISCRIMINATION/RETALIATION IN HOUSING[1]

GARY M. MARTIN, BERNICE MARTIN, DENNIS DONNELLAN, AND BETTY DONNELLAN – D/B/A GMM PROPERTIES — DEFENDANTS

DENISE NEWSOME, Complainant, complains that she has been discriminated and retaliated against by Gary M. Martin, Bernice Martin, Dennis Donnellan, and Betty Donnellan – d/b/a GMM Properties in violation of Fair Housing Act (FHA) and other applicable laws governing said matters and alleges as follows:

1. Complainant, Denise Newsome, resides at 128 East 5th Street, Apartment 5, Covington, Kentucky 41011.

2. Complainant makes this complaint against the following Defendants who are the owners/mangers of apartment building and may reside or conduct business at:

Gary M. Martin and Bernice Martin
1046 Arden Drive
Villa Hills, Kentucky 41017-3727
Phone No. (859) 341-6115 or (859) 331-4547

Dennis Donnellan and Betty Donnelan
1046 Arden Drive
Villa Hills, Kentucky 41017-3727 **or**
9090 Coachtrail Lane
Cincinnati, Ohio 45242-4604
Phone No.: (513) 984-4028

3. Defendants are owners and managers of the apartment building located at 128 East 5th Street, Covington, Kentucky 41011.[2]

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[1] Boldface, Italics, Underline, etc. added for emphasis.

[2] Listed address with the City of Covington being 124 5th St E. (See **Exhibit "1"** - Code Enforcement Department's Notification attached hereto and incorporated by reference.

Exhibit "81"

4. In September 2006, Complainant submitted to person alleging to be Gary Martin ("Martin") a completed rental application for a vacant unit in Defendants' apartment building, located at the address set forth above.

5. In September 2006, Complainant was notified that she qualified and/or her application had been approved.

6. Complainant is informed and believes, and on that basis alleges, that Defendants denial of housing accommodations to her is because race and the reporting of housing violations under the laws. Complainant is an African-American female.

7. Complainant has been and continues to be discriminated against in her efforts to rent the apartment in which she is currently residing, located at 128 East 5th Street, Covington, Kentucky, 41011, because she has complained of the housing violations/conditions and failure of Defendants to service, and properly maintain facilities and has filed a lawsuit in the Kenton County Circuit Court. A copy of said complaint is attached hereto as **Exhibit "2"** and is incorporated herein by refrence.

8. Pursuant to 42 U.S.C. § 3604(b), it is unlawful to discriminate against any person in the terms, conditions or privileges or the provision of services or facilities in connection with the sale or rental of a dwelling because of race.

9. Defendants have a duty to apply all terms, conditions and privileges of the rules and regulations in a non-discriminatory manner. However, Defendants have failed to do so.

10. **PRIMA FACIE UNDER FHA:** Defendants as owners/managers and/or agents for GMM (1) placed the apartment located at 128 East 5th Street, Apartment 5 on the open market for rent; (2) the Complainant was willing to rent said property/apartment and submitted her application; (3) the Complainant conveyed to Defendant her willingness to rent said property/apartment; (4) that upon renting the apartment to Complainant, Defendant then notified Complainant that they did not want to rent the apartment, advised her not to bother to move in because she would not be there long, and began to seek ways to have her unlawfully/illegally removed; (5) there is no apparent reason for Defendants to refuse to rent the property/apartment to the Complainant other than her race.

11. **PRIMA FACIE UNDER FHA:** Defendants as owners/managers (1) placed the apartment located at 128 East 5th Street, Apartment 5, Covington, Kentucky on the open market for rent; (2) Complainant is an African-American; (3) Complainant applied for and was qualified to rent said apartment; (4) Complainant was rented said apartment; however, Defendants later refused to rent her said apartment after Complainant complained about Defendants failure to provide services and maintain facilities in a lawful manner, the living conditions, health and safety issues with said apartment; (5) Defendants than sought to have the Complainant illegally/unlawfully removed/evicted (See **Exhibit "3"** – LAST NOTICE attached hereto and incorporated by reference); (6) Complainant was required to get an Injunction and Restraining Order against Defendants, their agents, representatives, etc. (See **Exhibit "4"** – ORDER attached hereto and incorporated herein by reference): (7) for approximately one year, Defendants have

sought to deprive the Complainant the apartment and as recent as August 23, 2007, have continued such illegal/unlawful practices and has notified Complainant through their attorney that "you are hereby notified that the Lease will be ending on September 30, 2007, and will not be renewed past that time, and you should vacate on or before September 30, 2007. " In so notification the Defendants are in violation of the Fair Housing Act; and (8) if the Defendants were to have the Complainant illegally/unlawfully evicted/removed, the apartment would remain available for renting. Defendants are in violation of 42 U.S.C. § 3604(a)(b)(c).

12. Further the Complainant asserts that the Defendants violated 42 U.S.C. § 3604(a)(b)(c) by discriminating in the terms, conditions, or privileges of rental of a dwelling and in the provision of services or facilities in connection therewith by failing to provide proper services in the maintaining of the apartment; failing to inspect and prepare property for rental; failing to disclose structural defects in the property resulting in damage and unsafe/unhealthy conditions; failing to provide necessary maintenance; demanding unlawful payment of rent while simultaneously failing to provide terms, conditions, privileges, services and facilities of rental of said property/apartment.

13. Further Defendants violated 42 U.S.C. § 3617 by retaliating, harassing, threatening and intimidating Complainant in the malicious prosecution action filed against her and then attempting to have her illegally/unlawfully evicted/removed from her apartment.

14. As a result of Defendants' actions, Complainant has suffered grievous harm and damages including but not limited to monetary damages and emotional suffering.

15. That despite Complainant's qualifications for said lease, that she has been unduly subjected to having to live in unsafe/unhealthy and deplorable conditions as a result of Defendants' discriminatory treatment.

16. Complainant contends that the Defendants have conspired and schemed to deny her the rental of the apartment to her as an African-American.

17. Complainant does not believe that Defendants nor whites similarly situated have been required to live under such conditions as they have required her to live.

18. Complainant further states that after complaining and making objections to condition of the apartment and violation of building codes and reporting same to the appropriate authority/agency, Defendants retaliated and subjected her to interference; coercion and intimidation and possible duress pursuant to § 3617.

19. Complainant maintains that the rental of her apartment was an ongoing and continuous scheme to deny equal housing opportunity to the Complainant as whites similarly situated and thereafter resulted in the intentional act to rent a substandard apartment to Complainant which was known to have structural defects, as well as refusing to service apartment and/or to provide substandard services in the rental of services associated with said rental of apartment.

20. The Complainant states that she was leased a substandard apartment, denied proper repairs; and unduly prejudiced during her move in by failure of the Defendants to service and maintain their property in compliance with FHA and the building codes/regulations governed by laws.

21. Complainant further believes that said action was based upon her race; moreover, Complainant's participation in protected activities.

22. As a result of said action, the Defendants in violation of 42 U.S.C. § 3604 discriminated against Complainant in the terms, conditions, or privileges of the rental of the dwelling/apartment and in the provision of services or facilities in connection therewith, because of her race.

23. The Complainant states that as a result of protesting against the unlawful interference with her right to equal housing and/or fair housing and the right to contract under the laws as whites similarly situated that her right to enjoy her apartment was interfered with on account of her having exercised the rights protected under 42 U.S.C. § 3604.

24. Complainant states that Defendants interfered with her enjoyment of protected rights under the Fair Housing Act; interfered with enjoyment of her residence/apartment and that Defendants subjected her to threats and/or acts of force and coercion.

25. Complainant states that the Defendants severe unlawful acts, threats, interference, and intimidation generated fear in her; moreover, lead to the Complainant having to seek the court for an injunction and restraining order. (See **Exhibit "4"** attached hereto and incorporated by reference). Upon reporting said violations Complainant began receiving obscene, annoying and threatening calls – upon reporting such behavior and acknowledgement f record conversation, such calls appears to have ceased.

26. Complainant states that the acts of Defendants were intentional and meant to deny her right to equal housing and/or fair housing protected by law.

27. Complainant states that the acts of the Defendants in unduly changing the terms and conditions of rental, as well as interfering with her right of rental based upon race was in violation of 42 U.S.C. §1981.

28. Complainant states that the Defendants acted unlawfully in denying to her the right to make and enforce contract (Lease Agreement) and the full and equal benefit of all laws and proceeding for the security of persons and property as is enjoyed by white citizens.

29. Complainant avers that Defendants failed to assure the service and maintenance of apartment and that said failure was deliberate, willful and malicious to shield/hide damages of the residence known to them; moreover, to shield/hide the unsafe and unhealthy conditions of said dwelling.

30. Even if the Commission were to look at the United States Housing Act (if applicable), it will find that said Act requires:

> . . . no person shall rent or offer to rent any habitation unless habitation and its furnishings are in clean safe and sanitary condition, an obligation is placed upon landlord to put premises in a safe condition prior to their rental. United States Housing Act of 1937, § 1 as amended 42 USCA §144; also see *Whetzel v. Jess Fisher Management*, 282 F.2d 943.

31. Nevertheless, these Defendants rented apartment to Complainant in which they knew and/or should have known habitation and furnishings were not clean, safe and in sanitary condition.

32. The laws required that Defendants put Complainant's apartment in safe, clean and sanitary condition prior to renting to her; however, they failed to do so. The Complainant demands that her apartment be put in safe, clean sanitary and habitable conditions as required by laws.

33. The law is clear on such matters:

> **<u>Odor of Cat Urine</u>:** The odor of cat urine in one-family residence, which permeated the premises and was strong in certain areas than others, breached the statutory provision, and resulted in a default in the landlord's warranty of habitability, in that continued habitation of the premises was thereby rendered detrimental to the health and safety of the occupants. CJS Landlord and Tenant § 673 – Statutory Warranty of Habitability. Also see, *Kekllas v. Saddy*, 88 Misc. 2d 1042, 389 N.Y.S.2d 756 (1976).

See **Exhibit "5"** attached hereto and incorporated by reference.

34. While the Lease prohibits pets, Defendants allowed previous tenants to have pets (cats, etc.) and upon previous tenant(s) vacating, allowed the carpeting to remain heavily permeated with animal urine, stains, etc. and remainder facility to remain in substandard conditions without repairs. The animal urine being so bad and foul that it permeates the apartment and clearly disturbing and annoying and depriving the Complainant the enjoyment of her apartment due to the nuisances reported to Defendants.

35. Defendant deliberately falsified the inspection report for Complainant's apartment. Defendant doing so to shield/hide such violations and unlawful/illegal actions committed. See **Exhibit "6"** attached hereto and incorporated by reference.

36. Complainant provided the Defendants with a list of damages and conditions of the apartment in correspondence entitled, "CONCERNS" and requested correction and/or resolution of the problem. To no avail. The Defendants refused to remedy the problems and elected, instead, to seek ways to unlawfully/illegally have the Complainant removed. See **Exhibit "7"** - Letter of October 15, 2006, attached hereto and incorporated by reference.

37. Defendants have been provided with pictures of the deplorable conditions - animal urine stained carpeting, mold, dirty facilities and damaged items which support the unclean, unsafe and unsanitary condition of the apartment the Defendants leased to her. See **Exhibit "8"** – Photographs attached hereto and incorporated by reference.

38. When the Defendants failed to remedy the problem, the Complainant began contacting the applicable agency(s) of said violations. Defendants being placed on notice that Complainant would report such violations and unlawful/illegal treatment to her the appropriate agency(s). To no avail. The Defendants allowed the apartment to remain in such disrepair and deplorable conditions. Depriving the Complainant services as those enjoyed by the Defendants and/or others so similarly situated.

39. The unlawful/illegal actions of the Defendants is *proscribed* by congressional statute(s).

40. Defendants' refusal to rent to the Complainant is unlawful/illegal and is in violation of the FHA. Complainant through this action seek same accommodations afforded whites and those similarly situated that are able to enjoy there apartments without such unsafe, unclean, unsanitary, etc. conditions/nuisances.

41. While the laws make provisions for the withholding of rent, the Complainant has been required to pay the rent into the court until issues can be resolved. The Complainant has had to live for an entire year without furnishings because Defendant advised her not to bother to move in because she would not be there long – clearly showing discriminatory intent to deprive the Complainant rights secured under the FHA.

42. While these Defendants have attempted to rely upon special favors from the Judge (who prior to becoming judge worked with Defendants counsel – however, willfully and deliberately failed to divulge this information to the Complainant. Complainant had to learn of such relationship through other means) assigned the matter; however, the Complainant awaits justice (equal protection of the laws and due process of laws) to correct the discriminating housing she has been subjected to.

43. While the Defendants leased the apartment to the Complainant, they continued to seek ways to discriminate against her and continued to subject her to discriminatory practices in efforts of trying to force her to give up her apartment. When such efforts by Defendants failed, they resorted to *criminal* acts and/or practices to have the Complainant illegally/unlawfully removed pursuant to 42 U.S.C. § 3631 ***Criminal*** *Interference with Right to Fair Housing*. See **Exhibit "9"** – Statute and information obtained from Federal Bureau of Investigations' (FBI) website attached hereto and incorporated by reference.

44. To under stand the criminal actions of these Defendants, their attorneys and others in cohort with them, the Complainant sets forth the following facts:

a. Defendant was aware that Complainant had filed Complaint and federal court and was advised by Order in which court her complaint was to be filed;

b. Complainant proceeded to file Complaint in the Kenton County Circuit Court. On the way to said Court Defendant's representative (person claiming to be Gary Martin) saw the Complainant on her way to the courthouse. In an effort to beat the Complainant in refiling her complaint in the applicable court, Defendants through their attorney made mad dash to the Kenton County District Court to file their malicious complaint against the Complainant; however, failed in such efforts in that Complainant's complaint was filed prior to Defendants;

c. In furtherance of their unlawful/illegal actions Defendants relied upon the ***criminal*** acts of the Kenton County Sheriff's to falsify Proof of Service in their action and failure serve the Complainant in compliance with the laws governing forcible detainer actions;

d. Upon learning that Judge Bartlett was the Judge assigned the Complainant's case in the Kenton County Circuit Court, Defendants relied upon their attorney's relationship (prior working relationship at the same law firm as Judge Bartlett prior to him taking the bench) with Judge Bartlett to enhance and to obtain an undue advantage over the Complainant in her action and to get decisions contrary to law rendered in their favor. To their disappointment, Complainant found out about the working relationship between the Judge and Defendants' counsel and raised timely objections to same; moreover, neither the Judge nor Defendants' counsel volunteered the information regarding their previous working relationship to the Complaint (who is proceeding pro se).

e. In *Lewis et al. v. Outten*, the court found:

> "the service of a warrant of forcible entry and detainer ***must*** *be by notice to each defendant* ***in person*** – constructive notice.". . .
>
> There was ***no personal service*** of the warrant . . . one of the plaintiffs in error. There is nothing in the record tending to shew that the appeared on the trial in the country, or ever entered his appearance in the circuit court. The only evidence of a service on him of the warrant is a return, in substance, that a written notice had been left at a house called "the ferry house" – that "being supposed the most common place for him to be found." Such a return could not operate even as a good constructive notice. But the statute requires actual notice; the third section, I Dig. 609, requires that, "*notice shall be given to* ***each*** *defendant* ***in person***."

> As there does not appear to have been any waiver of notice, the judgment was unauthorized, and must be reversed.
>
> [-as by copy left &c. is insufficient. Written notice left at the supposed most common place for him (defendant) to be found is not a good constructive service.]

See **Exhibit "10"** – *Lewis v. Outten,* attached hereto and incorporated by reference.

f. In efforts to circumvent the laws and in efforts of trying to get the Complainant to appear through such fraudulent service of process of their malicious action filed in District Court, the Defendants failed in such efforts and the Complainant notified Defendants and the District Court that she was not waiving service of process in said action; therefore, did not appear and therefore, said court lacked jurisdiction over the Complainant.

g. Defendants relied upon such fraudulent practices in which to bring the Complainant into the jurisdiction of the Kenton County District Court; however, the Complainant did not bite.

h. In *Wood v. Wood* the court found:

> Service of process upon a defendant who has been brought with the reach of process by the **fraudulent** representations of the plaintiff confers upon the court **no** jurisdiction to render judgment, *and **any** representation, whether true or false, is **fraudulent**, if made with **fraudulent** design.*

See **Exhibit "11"** *Wood v. Wood,* attached hereto and incorporated by reference.

i. Complainant provides said case law and supporting evidence to further support at what lengths the Defendants have gone to deprive her rights secured under the FHA. Moreover, relied upon special favors and relationships with the Judge, Sheriff's department, etc. to pull certain strings to get her out of the apartment through *fraudulent* practices. However, Defendants failed in such efforts.

j. Upon review of the handling of process, the Commission will find that the Sheriff's Department in the handling of process committed fraudulent practices in an effort to aid the Defendants in the unlawful/illegal removal of the Complainant. Sheriff's Department falsified process and/or abused said process in the handling of Defendants complaint. In such desperate efforts, clearly failed to comply with the laws and mailed notice and afterward then posted notice on apartment building (not apartment door of Complainant) and failed to certify/execute the "Proof of Service" required by law because aware of the fraudulent practices they were engaging in. See attached hereto the MAILED copy of the *Eviction Notice* and *Forcible Detainer Complaint* as **Exhibit "12"** and incorporated herein; compared to the POSTED copy of the *Eviction Notice*

and *Forcible Detainer Complaint* as **Exhibit "13"** and incorporated herein. Neither of which the Proof of Service is completed to support how service was had on the Complainant or whether or not process was had in accordance with the laws.

42 USC § 3631. Violations; penalties:

Whoever, whether or not acting under color of law, by force or threat of force willfully injuries, intimidates or interferes with, or attempts to injure, intimidate or interfere with—

(a) any person because of his race, color, religion, sex, handicap (as such term is defined in section 3602 of this title), familial status (as such term is defined in section 3602 of this title), or national origin and because he is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwelling, or applying for or participating in any service, organization, or facility relating to the business of selling or renting dwellings; or

(b) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—

(1) participating, without discrimination on account of race, color, religion, sex, handicap (as such term is defined in section 3602 of this title), familial status (as such term is defined in section 3602 of this title), or national origin, in any of the activities, services, organizations or facilities described in subsection (a) of this section; or

(2) affording another person or class of persons opportunity or protection so to participate; or

(c) any citizen because he is or has been, or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, handicap (as such term is defined in section 3602 of this title), familial status (as such term is defined in section 3602 of this title), or national origin, in any of the activities, services, organizations or facilities described in subsection (a) of this section, or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate— . . .

See **Exhibit "9"** attached hereto and incorporated by reference and **Exhibit "14"** obtained from FBI's website attached hereto and incorporated by reference.

LEGAL CONCLUSIONS/CASE LAW IN SUPPORT OF COMPLAINT

45. 42 U.S.C. § 3604 - Discrimination in the sale or rental of housing and other prohibited practices:

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color,

religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

46. Defendants have intentionally violated the rights of the Complainant because of her race with such preferences, limitations and discriminatory treatment as a direct result of her requesting they comply with the laws governing protection of her rights.

47. After making a bona fide offer to rent to Complainant, Defendants have now refused and/or are refusing to continue to rent to the Complainant. Defendants have provided no reasons for said refusal; however, based upon the information and evidence contained herein, a reasonable mind may conclude that such refusal/acts are precluded by constitutional statutes/authorities. Moreover, one may conclude that the actions of Defendants are in retaliation of Complainants notifying them of violations under the housing laws.

48. Defendants have discriminated against the Complainant in the terms of conditions or privileges in the renting of her apartment because of her race. Failing to correct such conditions as it has afforded to other tenants. Said failure being done in efforts of forcing the Complainant to abandon her apartment so that they may lease it to someone else.

49. 42 U.S.C. § 3617 - Interference, coercion, or intimidation:

> It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title.

50. Defendants have interfered with Complainant's peaceful enjoyment of her apartment and have allowed the nuisance reported to remain during the duration of the lease. Said acts which are in violation of the § 3617.

51. Interfere – Liability under Fair Housing Amendments Act for those who "interfere" in enjoyment of protected right requires use or threat of force, coercion, or duress to hinder valid housing rights. See 42 U.S.C. § 3617 at n. 4.

52. Intimidation – "Intimidation" for the purpose of application of the Fair Housing Act (FHA) requires a showing that a defendant's activities generated fear in the plaintiff. 42 U.S.C. §3617 at n. 7.

53. Defendants have relied upon intimidating acts to incite fear in the Complainant which resulted in her having to petition the Court for an Injunction and Restraining Order against them, their agents, attorneys, representatives, etc. See **Exhibit "4"** attached hereto.

54. The acts of Defendants are an embarrassment, undignified, harassing, annoying and detrimental to public health, safety and welfare.

55. The Defendants have retaliated against Complainant as a direct and proximate result of her exercising her rights and notifying them of violations under housing laws, etc. and/or the applicable laws governing said matters.

56. Since living in the apartment, Complainant has not received fair treatment and/or equal housing opportunities because of her race and that accorded to the Defendants and/or those of white tenants.

57. With the passage of the Fair Housing Law in 1968, Kentucky established a public policy of encouraging fair treatment and equal housing opportunities for all persons, regardless of race, color. . .

The General Assembly said that discrimination against an individual represents an affront to the dignity of the individual against whom it is directed, intensifies group conflicts, and is detrimental to the public health, safety and welfare. . .

WHAT THE LAW PROHIBITS:

Kentucky's Fair Housing Law forbids discrimination in housing because of a person's **race, color,** . . . *It also* ***forbids retaliation***.

See **Exhibit "15"** Housing advertisement attached hereto and incorporated by reference.

58. 15 POF 2d 525, 532:

> The Fair Housing Act of 1968 prohibits discrimination in the rental of private housing. Section 3604 of the Act makes it generally unlawful: (1) to refuse to rent, after the making of a bona fide offer, or to refuse to negotiate for the rental of, or otherwise make available or deny, a dwelling to a person because of race, color, . . .; (2) to discriminate against any person in the terms, conditions, or privileges or rental of a dwelling or in the provision of services or facilities in connection therewith on the same grounds; and (3) to represent to any person because of race, color. . . that any dwelling is not available for inspection or

rental when such dwelling is in fact so available.

> Even though *the attorney* may find it impractical, because of the small financial stakes involved in a particular case or for various other reasons, to prosecute a civil suit to remedy any violation of a civil rights statute, such as section 1982, he may find it advisable to seek criminal prosecution of the violators, pursuant to federal statutory provisions imposing criminal liability for violating federal civil rights statutes. *Id.* 533 [**Criminal** liability, under 18 USCS §§ 241, 242, for depriving, or conspiring to deprive, a person of his civil rights – Supreme Court cases. 20 L.Ed.2d 1454. Am. Jur: Criminal sanctions for violation of civil rights statutes are discussed in detail in 15 Am Jur 2d, Civil Rights §§ 288, 289].

59. 15 POF 2d 539, § 4 – Prima Facie Case - Intent:

> . . . in actions under the 1968 Act an intent to discriminate ***need not*** be proven *as long as the acts in question had a discriminatory impact, at least under <u>some</u> circumstance.*

60. Defendants are stilling attempting to have the Complainant unlawfully/illegally removed and continue to subject her to discriminatory treatment in the refusal to continue renting the apartment in which she lives to her.

61. Defendants have refused to make reasonable accommodations in rules, policies, services and practices in accordance with the FHA and/or laws governing said matter. Such accommodations which the laws will support are mandatory and the Complainant is entitled to.

62. "Unlawful discrimination," within meaning of Fair Housing Amendments Act of 1988 (FHAA), includes refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford . . . person equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604 at n. 91.

63. This section prohibiting discrimination in housing because of race prohibits no only overt racial rejection of applicants, but subtle behavior as well. 42 U.S.C. § 3604 at n. 91.

64. Complainant is African-American and qualified to rent the apartment in which she lives and to date is qualified to continue to rent the apartment in which she lives and does not wish to move at the present time. Defendants are aware that the Complainant desires to continue to live at her residence and has repeatedly requested in settlement demands that they correct the violations reported and bring the apartment into full repair in compliance with the laws governing housing, etc. matters.

65. To make out prima facie discriminatory housing refusal case, plaintiff must show that he is a member of statutorily protected class who applied for and was qualified to rent or purchase housing and was rejected although housing remained available. 42 U.S.C. § 3604 at n. 92.

66. Under Fair Housing Act section proscribing refusing to sell or rent housing because of race, color, . . . plaintiff establishes a prima facie case by showing that she belongs to a minority, defendant was aware of it, plaintiff was ready and able to accept defendant's offer to rent, and defendant refused to deal with her. 42 U.S.C. § 3604 at n. 92.

67. While the Complainant is a minority and the Defendants are aware of this, Complainant accepted the Defendants offer to rent the apartment and did so; however, now the Defendants are refusing to rent her the apartment in which she has lived for approximately one (1) year, and, are refusing to deal with the issues presented them in regards to the housing conditions reported to them. Defendants failing to do so because they want to rent Complainant's apartment to someone else.

68. A plaintiff who claims that he as an individual has been the victim of a racially discriminatory denial of housing may establish a prima facie case under Fair Housing Act by proving that he is black, that he applied for and was qualified to rent or purchase housing, that he was rejected, and that housing opportunity remained available. 42 U.S.C. § 3604 at n. 92.

69. Fair Housing Act section proscribing refusing to sell or rent housing because of race, color. . . does not require proof of discriminatory intent. 42 U.S.C. § 3604 at n. 93.

70. While the Constitution does not contain a guarantee of access to dwellings of a particular quality, person may not be denied, on the basis of race, certain "conditions," "services" or "facilities" in connection with renting a dwelling. 42 U.S.C. § 3604 at n. 24.

71. 40 ALR 3d 753, 754 - Retaliatory Eviction of Tenant for Reporting Landlord's Violation of Law:

> [b] Related matters: Validity and construction of statute or ordinance authorizing withholding or payment into escrow of rent for period during which premises are not properly maintained by landlord. 40 ALR3d 821.
>
> § 3 – **Retaliatory Eviction For Reporting Violation of Law as Not Permissible:**
>
> . . . courts recognized that a tenant, in an action against him by his landlord, may assert as a defense that the eviction was prompted by retaliatory motive on the landlord's part for the tenant's having reported violations of the law as to the building.

72. 15 Am. Jur.2d Civil Rights § 399 – **Retaliation:**

> It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise of, or on account of his having exercised or enjoyed, or on account of his having aided or encourgaged any other person in the exercise or enjoyment of any right granted by §§ 3603, 3604, 3605, or 3606 of the Fair Housing Act. Liability for interfering in the enjoyment of a protected right occurs through the use or threat of force, coercion, or duress to hinder valid housing rights.. . .

RELIEF SOUGHT

As of this particular date as it relates to this instant action filed with the Kentucky Commission on Human Rights, the Complainant is willing to accept the following relief:

73. That the Commission seek to have an Injunction and Restraining Order issued against these Defendants, their attorneys, representatives, agents, etc. to cease from unlawful/illegal violations, discriminatory practices, retaliation, etc.; however, not limited to these and to include any such additional inclusions that the Commission deems appropriate to protect the rights of the Complainant;

74. That Defendants be required to comply with the laws governing housing and put the Complainants apartment in full repair as required under the FHA and/or other housing laws governing said matters;

75. Any and all applicable relief that the Commission deems fair, just and warranted under the laws to protect the rights of the Complainant.

Respectfully submitted, this **20th** day of **September, 2007.**

COPY

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COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

NO. 2008-CA-000242-OA

~~DENISE NEWSOME~~ PETITIONER

vs. **ORIGINAL** ACTION
FROM KENTON COUNTY CIRCUIT COURT
ACTION NO. 07-XX-00001

HONORABLE GREGORY M. BARTLETT, IN HIS OFFICIAL CAPACITY
AS KENTON COUNTY CIRCUIT COURT JUDGE AND
KENTON COUNTY CIRCUIT COURT RESPONDENT

And

GARY M. MARTIN, BERNICE MARTIN,
DENNIS DONNELLAN, and BETTY DONNELLAN,
d/b/a GMM PROPERTIES REAL PARTIES IN INTEREST

PETITIONER'S WRIT OF PROHIBITION[1]

COMES NOW Petitioner Denise Newsome ("Petitioner"), in keeping with the Kentucky Court of Appeals Order of January 3, 2008 in Case No. 2007-CA-001589-MR, when it stated, "*A separate document fully complying with all requirements of CR 76.36 would have been necessary for the docketing of an original action,*"[2] and files this her **"ORIGINAL"** *Writ of Prohibition* ("WOP") action against Respondent, the Honorable Gregory M. Bartlett ("Respondent") and Real Parties of Interest, Gary M. Martin, Bernise Martin, Dennis Donnellan and Betty Donnellan, d/b/a GMM Properties ("Real Parties in Interest"), and hereby provides this Court with her *Writ of Prohibition* ("WOP" and/or "Prohibition" action). Said Order goes on to state, "*While appellant appears to believe that this court's decision indicates bias towards her, our decision is firmly rooted in law and*

[1] Boldface, Italics, underline, etc. added for emphasis. Retrieved information from and/or cut and pasted information from legal resources used such as WestLaw, American Jurisprudence, Kentucky Supreme Court Decisions, Kentucky Court of Appeals Decisions and other legal resources/statutes/laws.

[2] See **EXHIBIT "I"** at page 3, attached hereto and incorporated by reference as if set forth in full herein.

EXHIBIT "80"

is not the result of any kind of bias." Id. pg. 3. Therefore, based upon said Order, the Petitioner now hereby brings this original action this Court requires to address the wrongs, injustice, miscarriage of justice, bias, prejudice, etc. in the Respondent's and/or Kenton County Circuit Court's ("Circuit Court") handling of matter lower court. This instant Prohibition action is ***"rooted"*** and **"grounded"** in sound legal conclusions (past decisions of this Court, Supreme Court and other courts), arguments and evidence to support the relief sought herein. Petitioner based on Court of Appeals January 3, 2008 Order, has been lead to believe that its ruling in this instant Writ of Prohibition action will be *"firmly rooted in the law."* Thus, she expects "equal" protection and "equal" application of the laws and that justice prevail in accordance with such assurance given by this Court. The issues raised herein are ***well-settled*** (by the Kentucky Court of Appeals, Kentucky Supreme Court and/or other courts) as a matter of law. In support thereof the Petitioner states:

JURISDICTION

1. Petitioner herby request that the Kentucky Court of Appeals exercise jurisdiction in this matter pursuant to the Kentucky Constitution § 110, 111 and the Rules of the Court, Rule 81 of the Kentucky Rules of Civil Procedure, and other applicable laws governing said jurisdiction.

2. Jurisdiction of this Court to issue writ against the inferior court (Kenton County Circuit Court) is governed by laws. See Const. § 110, and *Kelly v. Tony*, 95 Ky 338, 15 R. 718, 25 S.W. 264; *Shoemaker v. Hodge*, 111 436, 23 R. 736, 63 S.W. 979; *Terry v. Baker*, 23 R 2406, 67 S.W. 259; *Com. v. Contrell*, 25 R. 20, 74 S.W. 691; *Com. v. Bavarian Brewing Co.*, 114 Ky. 877, 24 R. 1663, 72 S.W. 13; *Alexander v. Moss*, 28 R. 171, 89 S.W. 118; *Montgomery v. Viers*, 114 S.W. 251, 130 Ky. 694.

3. This is an ***original*** action in the nature of *Writ of Prohibition* against Circuit Court Judge Gregory M. Bartlett and/or the Kenton County Circuit Court, pursuant to CR 76.36.

4. This is an original action brought pursuant to Rule 1.030(3) of the Kentucky Supreme Court Rules, wherein "Proceedings in the nature of . . . prohibition against a circuit judge shall

originate in the Court of Appeals.

FACTS/GROUNDS UPON WHICH PROHIBITION RELIEF IS SOUGHT

Petitioner seeks the relief in this *Writ of Prohibition* action for the following reasons; however, said relief should not be limited to these reasons alone, but are to be governed by the applicable laws and *any and all* statutes/laws ***known to*** the Kentucky Court of Appeals in granting relief sought through Prohibition actions:

> *Irona Finn v. Hon. Jerry Winchester, Judge, McCreary Circuit Court and Daniel Thiels;* Ky. Ct. App. Case No. 2001-CA-000470-OA: . . . A writ of prohibition . . . is an extraordinary and discretionary remedy. . . See e.g., Southeastern United Medigroup v. Huges, Ky., 952 S.W.2d 195, 199 (1997), Having reviewed the parties' arguments and the appended record, this Court has determined that Finn has shown entitlement to a writ because the McCreary Circuit Court failed to base the exercise of its jurisdiction on an application of the law controlling the matter at hand. Therefore, an appeal would **not** be an adequate remedy. See *Chamblee v. Rose,* Ky., 249 S.W.2d 775 (1952). . . .Based upon the foregoing statutory authorities and on the principles set forth in *Can v. Howard,*[3] supra, we conclude that the McCreary Circuit Court incorrectly decided to exercise its jurisdiction at this time. *Irona* at pp. 4, 5 and 8. (See **EXHIBIT "II"** attached hereto and incorporated by reference as if set forth in full herein).

> *Vada Endicott Martin v. Administrative Office of the Courts*; Ky S.Ct. Case No. 2003-SC-0315-OA: This Court is generally authorized to exercise appellate jurisdiction only, except it shall have the power to issue all writs necessary in the aid of its appellate jurisdiction or the complete determination of any cause or as may be required to exercise control of the Court of Justice. Section 110(2)(a) Ky. Const. . . a writ of prohibition, is an extraordinary remedy authorized by Sections 110 and 111 of the Kentucky Constitution. It may be used by a court in a discretionary manner and only when the situation is so exceptional that there is no adequate remedy at law to prevent a miscarriage of justice. *Graham v. Mills,* Ky., 694 S.W.2d 698 (1985). Writs of prohibition . . . as extraordinary remedies are reserved for those situations in which a court is acting 1) without or beyond its jurisdiction and there is no adequate remedy by appeal; 2) outside its statutory authority. . . *Vada*, at p.3. (See **EXHIBIT "III"** attached hereto and incorporated by reference).

---

[3] 850 S.W.2d 57.

5. Petitioner resides at 128 East 5th Street – Apt. 5, City of Covington, County of Kenton, State of Kentucky. Respondent is the qualified and acting Judge of the Circuit Court of Kenton County, State of Kentucky. Petitioner is the Defendant named and ***illegally*** and/or ***unlawfully*** served with process in a certain action entitled "Gary Martin, Bernice Martin, Dennis Donnelan, and Betty Donnellan, d/b/a GMM Properties, Plaintiffs v. Denise Newsome, Defendant," being Cause No. 06-C-05059" brought in the District Court of Kenton County, State of Kentucky, by Real Parties of Interest.

6. On or about December 6, 2006, Petitioner was *illegally* and/or *unlawfully* served with process (not in compliance with statutes/laws) as Defendant in the District Court action to appear before said court and numbered action, by which the Plaintiffs (Real Parties in Interest in this WOP action) in through their unlawful/illegal practices demanded the defendant, this Petitioner, to appear alleging she "breached the lease because of the following: nonpayment of rent." See **EXHIBIT "IV"** attached hereto and incorporated by reference and made a part of this petition as if set forth in full herein.

7. On or about December 6, 2006, Petitioner submitted written correspondence with subject matter, "GOOD FAITH REQUEST – For the Withdrawal of Complaint Your Clients' Complaint Filed in the District Court of Kenton County Kentucky," to the attention of counsel for Real Parties in Interest, Gailen W. Bridges ("Bridges"), with a copy to Real Parities in Interest, GMM Properties/Owners. To no avail. Through said correspondence Real Parties in Interest and their counsel were timely, properly and adequately notified that Petitioner had filed a Complaint in the Kenton County Circuit Court prior to their filing of Complaint on behalf of his clients. See **EXHIBIT "V"** attached hereto and incorporated by reference and made a part of this petition as if set forth in full herein.

8. On or about December 11, 2006, in the preservation and/or protection of her rights the Petitioner submitted to the District Court a pleading entitled, "NOTICE OF NON-WAIVER OF SERVICE OF PROCESS." Said document being timely submitted and sufficient to preserve and/or protect the rights of Petitioner. Moreover, timely, sufficient and adequate to support evidence that said court was notified of its lack of jurisdiction over the Petitioner as well as the subject matter in that service of process was not had in accordance and/or compliance with statutes/laws governing said actions. A copy of said NOTICE OF NON-WAIVER is attached hereto as **EXHIBIT "VI"** (*Brief only* – entire pleading with supporting exhibits are already in the record of the courts) and incorporated by reference as if set forth in full herein.

9. The Kenton County District Court ("District Court") was and is wholly without jurisdiction of the action. By Petitioner's filing of NOTICE OF NON-WAIVER, said court and Real Parties in Interest and their counsel were notified:

> "through this ***special*** pleading and ***without waiving*** Service of Process in this matter, to hereby notify this honorable Court that Service of Process, ***has not been perfected*** as required by law in that constructive service of process was not followed to give this Court jurisdiction over this matter . . . Therefore, due

> to the violation of Defendant Newsome's ***constitutional, civil*** and ***legal rights*** in the service of process in this matter, she is not required to attend the hearing and/or trial set in this matter. Such an appearance Defendant Newsome on December 14, 2006, may be taken by this Court and Plaintiffs in this action that she waives service of process; wherein, she does not. Therefore, she will not be present and ***request that this Court remove the trial of this matter from the docket***. *Moreover, this Court is hereby notified that prior to the Plaintiffs filing of their Complaint in this Court, Defendant Newsome had already filed a Complaint against all parties in this action in the Circuit Court of Kenton County, Kentucky.*

See **EXHIBIT "6."**

10. Petitioner believes, and based upon the facts, evidence and legal citations presented herein and in the record of the lower courts, a reasonable mind may conclude the Kenton County District Court proceeded without jurisdiction of the action for the following reasons: **(a)** to deprive the Petitioner rights secured to her under the Kentucky Constitution, U.S. Constitution, Kentucky Civil Rights Act, Kentucky Fair Housing Act, Landlord and Tenant Act and other governing laws as it relates to such matters; **(b)** to deprive the Petitioner equal protection of the laws and due process of laws; **(c)** arbitrary and/or capricious purposes; **(d)** to unlawfully and/or illegally aid Plaintiffs (Real Parties in Interest in this WOP action) and their counsel in an unlawful eviction; **(e)** to unlawfully and/or illegally uphold service of process in district court action in which it knew was false and/or handled contrary to statutes/laws; **(f)** in retaliation to being notified by Petitioner of court's lack of jurisdiction, said court acted with willful and malicious intent to deprive her of justice, equal protection of the laws and due process of laws; **(g)** acted with willful and malicious intent, as well as with knowledge that the Proof of Service provided on Summons was falsified (falsifying service of process is a criminal act and punishable under the laws) deliberately and intentionally; **(h)** for any and all other reasons known to it to deliberately, willfully and maliciously deprive the Petitioner of protected rights. See **EXHIBIT "VII"** – Correspondence surrounding matter, attached hereto and incorporated by reference as if set forth in full herein.

11. Had the Real Parties in Interest proceeded with their criminal acts and had the Petitioner unlawfully/illegally evicted – Ruttle, Kenton County officials, Real Parties in Interest, their counsel and applicable parties would have subjected themselves to further liability and the Petitioner's rights to sue them for the legal wrongs and/or injustices rendered her.

> **§ 1985 – Action for Neglect to Prevent**
> Every person who, having knowledge that any of the wrongs conspired to be done. . . and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act is committed, shall be liable to the party injured, or his legal representatives, for **all** damages caused by such wrongful act, which such

> person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; *and* *any number* of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action.

12. While plaintiffs in District Court action failed to correct any such errors in service and said court proceeded to allow plaintiffs to bring their action with knowledge that it lacked jurisdiction over the Petitioner and/or subject matter (proceeding with case without requiring the Petitioner to be present and depriving the Petitioner rights secured to her under the Kentucky Constitution, U.S. Constitution, Kentucky Civil Rights Act and other governing laws), in so doing, the Petitioner sustained irreparable injury/harm and was deprived of equal protection of the laws and due process of laws. Furthermore, Petitioner has been subjected to unlawful/illegal acts to have her evicted, harassment, threats, etc.. Since Petitioner's pursuit of justice, Real Parties in Interest, their counsel and others have sought to have her illegally removed and/or evicted. See **EXHIBIT "VIII"** – LAST NOTICE attached hereto and incorporated by reference as if set forth in full herein. Real Parties in Interest and their counsel have sanctioned harassment, threats, etc. taken against her as a direct and proximate result of her exercising her rights and seeking justice in this matter. Such unlawful actions which resulted in the Petitioner having to obtain an injunction and restraining order against Real Parties in Interest, their counsel, representatives, etc. See **EXHIBIT "IX"** attached hereto and incorporated by reference as if set forth in full herein.

13. It is important to note how ***diligent*** the Kenton County District Court through Judge Ann Ruttle was to deprive the Petitioner of rights secured to her under the Kentucky Constitution, U.S. Constitution, Kentucky Civil Rights laws, Landlord and Tenant Act, and other governing laws and her ***eagerness*** and **zealousness** to aid the Plaintiffs and their counsel in stripping and/or violating the protected rights of Petitioner (defendant in district court). Moreover, there is evidence in the record of the lower courts and this Court to support the obstacles the Petitioner had to endure, Judge Ruttle and/or district court and its employees withheld documents/pleadings submitted in a timely manner in efforts to keep critical/crucial information from being considered prior to the trial set. See **EXHIBIT "VII"** attached hereto and incorporated by reference and made a part of this petition as if set forth in full herein. Given the facts surrounding said court's handling of this matter, Petitioner believes a reasonable mind may conclude that the acts of Judge Ruttle being arbitrary and/or capricious. Moreover, done with deliberate, willful and malicious intent to deprive the Petitioner equal protection of the laws and due process of laws as said court attempted to aid Real Parties in Interest and their counsel in having the Petitioner unlawfully and illegally evicted from her residence.

14. Notwithstanding Petitioner's objection and timely notification of District Court's lack of jurisdiction over her and/or subject matter, said court, in the person of Judge Ann Ruttle, proceeded with the action without Petitioner's presence. The record evidence supports that said court did not have jurisdiction over the Petitioner and/or subject matter. Said court did not have jurisdiction to hear and determine the action, nor did it have jurisdiction to enter a ruling and/or judgment in matter before it brought by the Plaintiffs, Real Parties of Interest in this Prohibition

action. A copy of the December 14, 2006 Judgment made by Judge Ann Ruttle is attached hereto as **EXHIBIT "X"** and is incorporated by reference as if set forth in full herein. Said Judgment which clearly leaves **unmarked** the item/option which states, ***"The (Defendant)(Plaintiff) having been duly summoned to appear but failed to appear and (defend)(prosecute) the within action."*** Moreover, the Judgment **does not** provide evidence that said court had obtained jurisdiction over the Petitioner and/or subject matter before it. ***Neither does said judgment address the jurisdiction issue*** (emphasis added).

15. Because of the District Court's lack of jurisdiction over the Petitioner and/or the subject matter, the Respondent Gregory M. Bartlett of the Kenton County Circuit Court also lacked jurisdiction over the Petitioner and/or subject matter and could not enter a ruling and/or judgment/order sustaining/affirming the District Court Judgment. In the interest of justice and to prevent a miscarriage of justice, the Kenton County Circuit Court was to dismiss the Kenton County District Court action for lack of jurisdiction; however, failed to do so. Instead, Respondent elected to take a far departure from the laws and affirm Judge Ruttle's Judgment entered in the District Court.

16. Respondent with knowledge and/or should have known that the Kenton County Circuit Court **did not** have jurisdiction over this Petitioner and/or the subject matter. Respondent in this instant Prohibition action proceeded to try the action rather than dismiss it for lack of jurisdiction and/or applicable laws governing said matters.

17. Without the Kentucky Court of Appeals intervention and granting of Prohibition relief, Respondent Judge will proceed to try and enforce its ruling entered on May 14, 2007, and pending before it while Petitioner seeks immediate relief from such injustice in that irreparable injury/harm to her will occur, unless the Kentucky Court of Appeals prohibit and/or restrain such acts by granting the relief sought through this Writ of Prohibition action. Petitioner has no plain, speedy, or adequate remedy by appeal or otherwise for the reason that lower courts to this action lacked jurisdiction therefore, precluding any such remedy by way of appeal.

18. Petitioner has no plain, speedy, or adequate remedy other than by issuance of Writ of Prohibition as sought herein. The record evidence will support that the Petitioner in good faith as well as in compliance with the laws governing said matters have taken previous steps to protect her rights -- notifying the lower courts of their lack of jurisdiction over her and/or the subject matter. To no avail. From the January 3, 2008, ruling of the Kentucky Court of Appeals, it appears that a reasonable mind given the facts, legal conclusions and evidence already in the record of this Court in Case No. 2007CA001589 and Case No. 2007CA000834 as well as lower court actions, they have subjected the Petitioner to unusual and/or questionable actions for purposes of increasing the costs of litigation and efforts to *financially devastate* her and to prevent her from litigating this action and deprive her justice. Rather than retaining jurisdiction and exercising supervisory powers granted this Court under the Kentucky Constitution and other governing laws to correct the injustices rendered her, this Court has entered rulings which has caused needless delays, time and extra money to litigate. Acts in which a reasonable mind given the facts may conclude have been done to financially burden the Petitioner and efforts to force her to abandon legally protected rights secured to her under the

Constitution, Civil Rights Acts and other governing laws.

19. Petitioner believes that upon reviewing the lower courts' record as well as the documents in the possession of this Court in Case Nos. 2007CA001589 and 2007CA000834, a reasonable mind and justice would conclude that the relief sought through this Prohibition action is warranted.

20. Petitioner believes that based upon reviewing the documents of the lower courts and that of this Court in Case Nos. 2007CA001589 and 2007CA000834, a reasonable mind and justice would conclude that the Kenton County Circuit Court and/or lower courts failed to ***base the exercise of their jurisdiction*** over the Petitioner and/or the subject matter on an application of the law controlling the lawsuit and/or matter brought before the lower courts. Moreover, that the Kenton County Circuit Court and/or lower courts exercised jurisdiction over the Petitioner and/or subject matter contrary to the statutes/laws. Therefore, the relief sought through this Prohibition action is warranted.

21. Petitioner believes that based upon reviewing the documents of the lower courts and that of this Court in Case Nos. 2007CA001589 and 2007CA000834, a reasonable mind and justice would conclude exceptional circumstances exist to warrant the granting of prohibition action, that there is no adequate remedy at law to prevent a miscarriage of justice, that the Kenton County Circuit Court and/or lower courts acted without jurisdiction over the Petitioner and/or subject matter, outside its statutory authority.

22. Relief in the nature of Prohibition may be granted when a court has acted in excess of its jurisdiction or has committed gross abuse of discretion in exercising its functions in circumstances where appeal is not appropriate or adequate remedy. The record evidence clearly supports lower court(s) lack of jurisdiction, gross abuse of discretion as well as other arbitrary actions; therefore, warranting the granting of relief sought through this instant "ORIGINAL" Prohibition action.

23. The required Notice regarding the filing of *Writ of Prohibition* has been served on Respondent and Real Parties in Interest as well as any other required individual/agency required to be notified. See **EXHIBIT "XI"** attached hereto and incorporated by reference as if set for in full herein.

MEMORANDUM OF AUTHORITIES IN SUPPORT OF WOP

Petitioner herein incorporates the opening paragraph and Paragraphs 1 through 23 as if set forth and full in support of the following legal arguments/legal conclusions, the *Notice of Filing Prohibition Action* filed in this action and pleadings filed by her in the lower courts moreover, the Kentucky Constitution and other laws to support the granting of the Prohibition relief sought by Petitioner:

24. **PURPOSE:**

63C Am. Jur.2d Prohibition ~3: ***Purpose*** - Prohibition purpose is to prevent an encroachment, excess, usurpation, or assumption of jurisdiction on the part of an inferior court or tribunal, or to prevent some outrage upon settled principles of law and procedure in cases where wrong, damage, and injustice are likely to follow from such action.[4] In other words, the purpose of a writ of prohibition is to keep a lower court within the limits of its jurisdiction in order to maintain the administration of justice in orderly channels.

63 Am.Jur2d Prohibition ~14: ***Generally*** - While an adequate remedy in the ordinary course of the law exists if the respondent tribunal has jurisdiction of the persons and the subject matter,[5] the availability of another adequate remedy is immaterial when a lower court totally lacks jurisdiction over the subject matter of a dispute pending there,[6] but there must be a patent and unambiguous restriction on the jurisdiction of the inferior court that is being violated before other remedies will be considered inadequate and the writ will lie.

63C Am.Jur2d Prohibition ~41: ***Generally*** - The fundamental purpose of the writ of prohibition is to prevent a usurpation of jurisdiction. Thus, prohibition is the proper remedy where:

- An inferior court usurps jurisdiction
- In the exercise of jurisdiction in handling matter clearly within its cognizance, an inferior court transgresses the bounds prescribed to it by the law, and there is no adequate remedy available in the ordinary course of the law[7]

Another way of stating this is that prohibition is proper where an inferior tribunal assumes to exercise judicial power not granted by law, or is attempting to make an unauthorized application of judicial force,[8] or is attempting to exercise authority beyond its jurisdiction.[9]

Angela Engle v. Worley A. Engle; and Aleisa D. Engle, Ky. Ct. App. Case No. 2005-CA-000622-ME: . . . Supreme Court cites to *Potter v. Eli Lilly and Co.*, 926 S.W. 2d 449 (Ky. 1996). . . .The trial court undertook an inquiry into the true facts and the parties sought a Writ of Prohibition. This Court allowed the trial court to reopen the case

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[4] *Farmers Nat'l Bank v. Speckman*, 312 Ky. 106, 226 SW2d 315.
[5] *State ex rel. Dormody v. McClure*, 50 Ohio St2d 335, 4 Ohio Ops 3d 476, 364 NE2d 278.
[6] *State ex rel. Dayton Power & Light Co. v. Kistler*, 57 Ohio St2d 21, 11 Ohio Ops 3d 108,385 NE2d 1076.
[7] *Herr v. Humphrey*, 277 Ky 42, 126 SW2d 809, 121 ALR 954.
[8] *Line v. Ruose*, 491 NW2d 316.
[9] *Estate of Tilton v. Lamoille Superior Court*, 531 A2d 919.

after judgment under the inherent authority of courts to see that their judgments are not tainted with deceit. The *Eli Lilly* Court agreed that "the courts have developed and fashioned [the equity rule] to fulfill a universally recognized need for correcting injustices." Although, . . . was not utilized by the Court in *Eli Lilly,* the decision displays a belief that under the rules of equity courts have an inherent authority to correct mistakes and protect the integrity of the judicial process. Equity and fairness were the bases of that decision. . . *Engle* at p. 11. (See **EXHIBIT "XII"** attached hereto and incorporated by reference).

KENTUCKY LAW:

Hoskins v. Maricle, 150 S.W.3d 1 (Ky.,2004) - Holdings: The Supreme Court, Cooper, J., held that: (1) existence of adequate remedy by appeal does not preclude issuance of writ to prohibit trial court from acting outside its jurisdiction, abrogating *Lewis LP Gas, Inc. v. Lambert,* 113 S.W.3d 171, Ky. *Labor Cabinet v. Graham,* 43 S.W.3d 247, *Commonwealth v. Ryan,* 5 S.W.3d 113, *Potter v. Eli Lilly & Co.,* 926 S.W.2d 449, *Fischer v. State Bd. of Elections,* 847 S.W.2d 718, *Shumaker v. Paxton,* 613 S.W.2d 130, *Tipton v. Commonwealth,* 770 S.W.2d 239, *Southeastern United Medigroup, Inc. v. Hughes,* 952 S.W.2d 195.

Roman Catholic Diocese of Lexington v. Noble, 92 S.W.3d 724 (Ky.,2002) - In certain special cases, the Supreme Court will entertain a petition for prohibition in the absence of a showing of specific great and irreparable injury to the petitioner, provided a substantial miscarriage of justice will result if the lower court is proceeding erroneously, and correction of the error is necessary and appropriate in the interest of orderly judicial administration.

The St. Luke Hospitals, Inc. v. Kopowski, 2005 WL 924220 (Ky.,2005) - Although showing of ruinous injury is not absolutely required to obtain writ of prohibition, when such high standard of harm is not met, writ of prohibition will only be ordered in exceptional circumstances, such as when failure to issue writ would result in substantial miscarriage of justice. Rules Civ.Proc., Rule 81.

25. The record evidence supports that there has been an infringement of Petitioner's protected rights secured to her under the Kentucky Constitution, U.S. Constitution, Kentucky Civil Rights Act, Landlord and Tenant Act and other governing laws, and the instant Prohibition action is brought for purposes of preventing an encroachment, excess, usurpation or assumption of jurisdiction on the part of the Respondent and/or Circuit Court (inferior courts) or tribunal, and to prevent such outrageous rulings and efforts by Real Persons in Interest from acting upon the May 14, 2007 Order of Dismissal entered by Respondent and/or Circuit Court and District Court which is contrary to statutes/laws and where such wrongs, damages and injustice is certain to follow if Prohibition relief is not granted. In other words, the Prohibition relief sought through this instant action is to keep the

lower courts within the limits of their jurisdiction in order to maintain the administration of justice in orderly channels.

26. As a matter of law, Petitioner does not believe (other than Prohibition action) there remains an adequate remedy to correct the injustice rendered her. Furthermore, it is both unlawful and ill advisement to the Petitioner's defense to expect her to waive service of process in this action. Petitioner filed a timely lawsuit in the Kenton County Circuit Court, Case No. 06-CI-3270 against Real Parties in Interest. Real Parties in Interest through their willful, malicious and wanton acts proceeded to file their action in the Kenton County District Court with knowledge that Petitioner had notified them she would be filing her lawsuit; moreover, upon seeing the Petitioner on her way to the Circuit Court to file her lawsuit. **Upon being notified of Petitioner heading to the courthouse to file her lawsuit, counsel (Bridges), on behalf of Real Persons in Interest, saw that a mad dash to the District Court to file their lawsuit was done; however, to his disappointment, he and his clients failed in their efforts to file their lawsuit before the Petitioner filed hers in the Kenton County Circuit Court. Such acts by Real Person in Interest and their counsel being done with knowledge that they failed in their efforts of getting the District Court jurisdiction over the Petitioner and/or the subject matter** (EMPHASIS ADDED). Actions clearly supporting Real Parties in Interest and their counsel's knowledge that the court in which the lawsuit is *first* filed in, is the court which obtains jurisdiction.

27. The laws are clear that availability of another adequate remedy is **immaterial** *because* both the Kenton County Circuit Court and the Kenton County District Court *totally lacked* jurisdiction over the subject matter and/or Petitioner over the dispute in the Case No. 06-C-05059 filed in the District Court and brought before the Kenton County Circuit Court on Appeal through Case No. 07-XX-00001 on such critical/crucial issues of jurisdiction. Furthermore, even if there was an existence of adequate remedy by appeal (when there was not), such other remedy does not preclude the issuance of writ to prohibit the Circuit Court and/or inferior courts from acting outside their jurisdiction.

28. The Petitioner further brings this instant Prohibition action to prevent an usurpation of jurisdiction by the Respondent and/or Circuit Court and to prevent transgression of the statute/laws governing jurisdiction. There is no adequate remedy available in the ordinary courts of the law that the Petitioner is aware of. In other words, this Prohibition action is proper in that the Respondent and/or Circuit Court and District Court proceeded to exercise judicial power not granted by law, is attempting to make an unauthorized application through judicial force, and is attempting to exercise authority beyond their jurisdiction.

29. Petitioner believes that a reasonable mind may conclude upon looking into the record (under the inherent authority) of this Court and the inferior courts as it originated from Real Parties in Interest's lawsuit filed in the District Court, that the Judgments and/or rulings are tainted, were obtained through deceit and corrupt practices and are **not** legally and/or lawfully binding. Therefore, it is the duty of this Court to see that the injustices rendered the Petitioner are corrected to protect the integrity of the judicial process – requiring equity and fairness to prevail and granting the relief sought though this Prohibition action.

30. The record evidence supports that without the granting of the Prohibition relief sought herein, the Petitioner will suffer a miscarriage of justice in that the Respondent and/or Circuit Court and District Court proceeded without jurisdiction. Correction of such gross abuse of discretion and prohibition relief is necessary and appropriate in the interest of orderly judicial administration. Therefore, issuance of writ of prohibition is imperative in that substantial miscarriage of justice if inevitable if not issued.

31. In support of the above referenced legal conclusions and/or case laws, the Petitioner further relies upon the statements provided within this instant Writ of Prohibition, *Notice of Filing Prohibition Action* as well as her pleadings and correspondence provided the Kenton County Circuit Court in Case No. 07-XX-00001, Kenton County District Court Case No. 06-C-05059, and Kentucky Court of Appeals Case No. 2007CA001589MR.

32. **TIME OF APPLICATION**

> 42 Am. Jur. Prohibition ~41: ***Time for Application*** - Prohibition will not lie to restrain an inferior court after the judgment has been given and fully executed, ***unless it appears*** on the face of the proceedings that the court has no jurisdiction. Similarly, prohibition will not issue after sentence ***unless want*** of jurisdiction appears on the face of the proceedings.[10] "If, it appears from the face of the proceedings that the court below has no jurisdiction, a writ of prohibition **may issue at *any* time** either before or after sentence, because all is a nullity; it is *coram non judice*."[11] . . .But so long as anything remains to be done under a void judgment or order, prohibition may prevent the doing of it.[12]

33. As a matter of law, this instant Writ of Prohibition action has been timely submitted and is in compliance with the statutes/laws governing said matters.

34. The instant Prohibition action has been filed in good faith and is not being filed to hinder or delay proceedings, obstruct the administration of justice, increase the costs of litigation; however, has been brought to protect Petitioner's rights secured to her under the laws/statutes of the State of Kentucky and the United States.

35. The record evidence clearly supports that based upon the facts, evidence, legal conclusions presented in the Court of Appeals as well as the inferior courts (Kenton Circuit and Kenton District) that on the face of the proceedings, the lower courts to this action never had jurisdiction over the Petitioner and/or the subject matter. Therefore, based upon such want of jurisdiction, the Prohibition relief sought herein is to be granted. The Prohibition relief sought herein may be issued at any time either before or after rulings entered because all were a nullity (all

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[10] *Re Cooper,* 143 U.S. 472, 36 L.Ed.232, 12 S.Ct.453.

[11] **Coram non judice:** (1) Outside the presence of a judge. (2) Before a judge or court that is not the proper one or that cannot take legal cognizance of the matter. - Black's Law Dictionary 8th Edition.

[12] *Willis v. Warth,* 151 S.E. 707.

judgments/orders entered being **VOID**) – moreover, the Kentucky Court of Appeals, Kenton County Circuit Court and Kenton County District Court having full knowledge of this; however, failed to correct such injustices brought to their attention in efforts of depriving the Petitioner equal protection of the laws and due process of laws. The Prohibition relief sought herein is brought to *prevent* lower court(s) execution under a void judgment/order and is brought to prevent Respondent and/or Circuit Court from enforcing it so that Real Parties in Interest cannot act upon it.

36. Petitioner believes the record evidence will support that the prerequisite in bring this Prohibition action has been met. Therefore, this Prohibition action has ripened and has not been brought prematurely.

37. In support of the above referenced legal conclusions and/or case laws, the Petitioner further relies upon the statements provided within this instant Writ of Prohibition, *Notice of Filing Prohibition Action* as well as her pleadings and correspondence provided the Kenton County Circuit Court in Case No. 07-XX-00001, Kenton County District Court Case No. 06-C-05059, and Kentucky Court of Appeals Case No. 2007CA001589MR.

38. **SUPERVISORY CONTROL**

> ***Writ of Supervisory Control*** - A writ issued to correct an erroneous ruling made by a lower court either when there is no appeal or when an appeal cannot provide adequate relief and the ruling will result in gross injustice.[13]

KENTUCKY LAW:

> *Carpenter v. Wells,* 358 S.W.2d 524 (Ky.,1962) - (n. 5) The supervisory power of the Court of Appeals in the constitution is to prevent miscarriage of justice and "injustice" is something in the nature of usurpation or abuse of power by a lower court, such as to demand that the Court of Appeals step in to maintain a proper control over lower court. Const. § 110.. . . (n. 6) If an erroneous order of a trial court results in a substantial miscarriage of justice, showing of great and irreparable injury is not an absolute necessity to exercise of supervisory power of Court of Appeals by prohibition. Const. § 110. . . .(n. 7) Where petitioners were faced with punishment for contempt of court for refusing to answer relevant questions and as nonparties to action that had no remedy by appeal, threatened action of lower court constituted a usurpation or abuse of power with requisite element of great and irreparable injury sufficient to justify exercise of Court of Appeal's power by prohibition in order to prevent a miscarriage of justice. Const. § 110.
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> *Illinois Cent. R. Co. v. Rice,* 156 S.W. 1075 (Ky.,1913) - General supervisory jurisdiction of the Court of Appeals, conferred by Const. § 110, will not ordinarily be exercised to stay a court of inferior jurisdiction from hearing a case in which no appeal can be taken, unless there is no adequate

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[13] Blacks Law Dictionary – Eighth Edition.

remedy, and it is necessary to prevent injustice.

Bender v. Eaton, 343 S.W.2d 799 (Ky.,1961) - Exercise by Court of Appeals of its broad supervisory control of lower courts has no limits except its judicial discretion and each case must stand on its own merits. Const. § 110.

Cadden v. Smith, 264 S.W.2d 71 (Ky.,1954) - The power of the Court of Appeals to control the action of courts of inferior jurisdictions is limited to cases in which the inferior court is acting without jurisdiction, or is acting erroneously within its jurisdiction which will cause great and irreparable injury and from which petitioner has no legal remedy. Const. § 110.

Weintraub v. Murphy, 240 S.W.2d 594 (Ky.,1951) - Court of Appeals is not reluctant to operate within general supervisory jurisdiction conferred upon it by the Constitution in cases in which no appeal can be taken, where injustice may be prevented, where great and irreparable injury may result, and where there is no other adequate remedy. Const. § 110.

Powell v. Graham, 2006 WL 435396 (Ky.,2006) - The object of the supervisory power of the Supreme Court is to prevent miscarriage of justice.

Sidell v. Hill, 357 S.W.2d 318 (Ky.,1962) - Court of Appeals in overseeing inferior courts is not restricted to narrow field of vision seen only by judicial eyes and can consider matters of general public intelligence. Const. §§ 110, 136.

OTHER COURTS:

In re Phelan, 225 Wis. 314, 274 N.W. 411 (Wis. 1937) - The Supreme Court in exercise of its superintending jurisdiction may within its sound discretion and pursuant to its applicable rules control the course of litigation in all of the other courts of the state (Const. art. 7, § 3).

39. This instant Prohibition action is also brought because the Kentucky Court of Appeals failed to exercise its supervisory authority/control and correct the injustices and/or miscarriage of justice brought to its attention in previous filings brought to it in Case No. 2007CA001589 of this Court. Instead of correcting the wrongs and injustices complained of by the Petitioner through the supervisory powers afforded this Court in the Constitution and other statutes/laws, Petitioner has had to expend additional time and costs when this Court (under its supervisory control) could have corrected the wrongs brought to it in a previous action before said Court. ***This Court was aware of the jurisdictional issue***; however, elected to take a far departure from the laws and not exercise its supervisory power and correct such wrongs and injustices brought to its attention. Through such actions clearly causing unnecessary delays/hindrances and requiring the Petitioner to have to incur additional time and expenses in bring now this instant "ORIGINAL" Prohibition action.

40. Petitioner believes in the previous 2007CA001589MR action, the Kentucky Court of Appeals had the supervisory authority to issue writ to correct a

ruling made by the Respondent and/or Kenton County Circuit Court and the District Court; however, failed to exercise said authority. Thus, resulting in loss of time, needless delays and increase in cost of litigating such matters. This Court knew and/or should have known based upon previous rulings and/or decisions rendered by it, that no other remedy by way of appeal was available to the Petitioner and that the lower courts' rulings were a gross injustice to her. Instead of exercising its supervisory power and correcting such injustices, this Court dismissed previous 2007CA001589MR action brought addressing the jurisdictional violations, when it knew all along that it had the authority to look beyond the pleadings and apply the appropriate laws to prevent such legal wrongs and/or injustices. Nevertheless, the Kentucky Court of Appeals now have the "original" action its January 3, 2008 Order required had to be before its court to determine.

41. Under the supervisory power of the Kentucky Court of Appeals granted it under the Constitution, this Court had an obligation to prevent miscarriage of justice and "injustice" that came to it in the nature of usurpation, abuse of power by the lower court and prevent irreparable injury/harm to the Petitioner. While the Petitioner believes this Court clearly erred in advising her that the filing of "motion for discretionary review," because any such motion may have been taken as her waiving her defense of defective service of process and the lower courts' lack of jurisdiction. While this Court neither affirmed the lower courts' rulings, a reasonable mind may conclude it knew that because the lower courts lacked jurisdiction in proceeding with lawsuit filed in District Court, that such rulings could not be affirmed by the Court of Appeals. Either way, the Petitioner is now before this Court with her "ORIGINAL" action by way of Writ of Prohibition and said action is substantiated by prior rulings by this Court and supported by factual evidence and legal conclusions to support the relief in which the Petitioner seeks.

42. Respondent/Circuit Court also attempted to get the Petitioner to err by advising her that her way of relief was to file a "traverse" action by way of rebuttal; however, Petitioner proceeded to present the applicable facts to support that any such act by her in filing such would have waived the defense she asserted to the defect in service of process as well as the lower court's lack of jurisdiction. See **EXHIBIT "XIII"** – Appellant's Motion for Reconsideration of Order and supporting Memorandum Brief, attached hereto and incorporated by reference as if set forth in full herein.

43. Petitioner believes that a reasonable mind given the facts, evidence and legal conclusions in this matter may determine that this Court deliberately failed to exercise its supervisory power and "narrowed field of vision" for purposes of depriving the Petitioner justice; moreover, the jurisdictional issue was presented to this Court, but ignored (being certain to steer clear of said issue). Thus, challenging the Petitioner to see if she would know what pleading would be proper to bring before this Court to seek the relief sought herein.

44. The record evidence will support that while judicial discretion never authorizes arbitrary and capricious actions that defeat the ends of substantial justice, Judge Bartlett's and/or Circuit Court's action is contrary to laws. Moreover, any such duty by Judge Bartlett amounts to an abuse, manifests a disregard of duty and it appears that there is no other adequate remedy, that the

exigency is such as to justify the interposition of the extraordinary superintending power of the Kentucky Court of Appeals – to prohibit and/or restrain acts of Respondent and/or Circuit Court and grant the Prohibition relief sought herein by the Petitioner.

45. In support of the above referenced legal conclusions and/or case laws, the Petitioner further relies upon the statements provided within this instant Writ of Prohibition, *Notice of Filing Prohibition Action* as well as her pleadings and correspondence provided the Kenton County Circuit Court in Case No. 07-XX-00001, Kenton County District Court Case No. 06-C-05059, and Kentucky Court of Appeals Case No. 2007CA001589MR.

46. **NECESSITY OF OBJECTION IN INFERIOR COURT**

> 42 Am. Jur. Prohibition ~38: ***Necessity of Objection in Inferior Court*** - A writ of prohibition will not be issued to an inferior court unless the attention of the court whose proceedings it is sought to arrest has been called to the alleged lack or excess of jurisdiction, the foundation of the rule being the respect and consideration due to the lower court and the expediency of preventing unnecessary litigation.[14]

KENTUCKY LAW:

> *Potter v. Eli Lilly and Co.*, 926 S.W.2d 449 (Ky.,1996) - (n. 1) We must observe that a Writ of Prohibition is an extraordinary remedy and is generally issued only when the court in question is proceeding or is about to proceed outside its jurisdiction and there is no adequate remedy by appeal, or where it is about to act incorrectly, although it is within its jurisdiction, and there exists no adequate remedy by appeal or otherwise, and great injustice and irreparable injury would result to the petitioner if the court in question should so act. *Shumaker v. Paxton, Ky.*, 613 S.W.2d 130 (1981); Bender v. Eaton, Ky., 343 S.W.2d 799 (1961). . . . (n. 13) Inherent authority of court to conduct hearing where reasonable basis exists to believe that there is possible lack of accuracy or truth in original judgment goes beyond actual fraud and encompasses bad faith conduct, abuse of judicial process, any deception of court, and lack of candor to court, as system depends on adversarial presentation of evidence, and even slightest accommodation of deceit or lack of candor in any material respect quickly erodes validity of process.*U.S. v. Shaffer Equipment Co.*, 11 F.3d 450 (4th Cir.1993).[15]

> *Brumleve v. Cronan*, 197 S.W. 498 (Ky.,1917) - Defendant appearing for any purpose except to object to court's jurisdiction over his person thereby waives any objection to such jurisdiction, and in effect enters his appearance

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[14] *Hargis v. Parker*, 27 Ky L Rep 441,85 S.W. 704, 69 LRA 270.

[15] In this case, there was a serious lack of candor with the trial court and there may have been deception, bad faith conduct, abuse of the judicial process or perhaps even fraud. That is what the investigation and hearing is to determine. We cannot tolerate even the possibility of such conduct at either the trial or appellate level.

generally.

Bailey v. Floyd County Bd. of Educ. By and Through Towler, 106 F.3d 135 (C.A.6.Ky.,1997) - Court of Appeals will not consider arguments raised for first time on appeal unless its failure to consider issue so raised will result in plain miscarriage of justice.

Saylor v. U.S., 315 F.3d 664 (C.A.6.Ky.,2003) - Court of Appeals will not normally consider arguments not raised in the district court below.

Bailey v. Floyd County Bd. of Educ. By and Through Towler, 106 F.3d 135 (C.A.6.Ky.,1997) - Court of Appeals will not consider arguments raised for first time on appeal unless its failure to consider issue so raised will result in plain miscarriage of justice.

Saylor v. U.S., 315 F.3d 664 (C.A.6.Ky.,2003) - Court of Appeals will not normally consider arguments not raised in the district court below.

Jackson v. Metropolitan Life, 24 Fed.Appx. 290 (C.A.6.Ky.,2001) - Unless exceptional circumstances are present, issues which were not raised in any form and ruled upon in the district court are not properly before the Court of Appeals.

Gafford v. General Elec. Co., 997 F.2d 150 (C.A.6.Ky.,1993) - Although Court of Appeals may properly review jurisdictional issue sua sponte, other issues must be raised by party to be properly before Court of Appeals.

OTHER COURTS:

Delesdernier v. Porterie, 666 F.2d 116 (C.A.La., 1982) - Ordinarily, Court of Appeals will not consider issues which are raised for first time only on appeal; exceptions occur where refusal to consider the issue would result in a miscarriage of justice or where there is no opportunity to make a timely objection.

47. While the record evidence will support that the Kenton County District Court never retained jurisdiction in this action; moreover, that such failure was timely, properly and adequately presented to support lack of jurisdiction by the Petitioner, said District Court elected to usurp power and retain jurisdiction in lawsuit that it had no power to do so. Furthermore, to add insult and further injury to the Petitioner, Judge Bartlett/Circuit Court was aware of lack of jurisdiction and proceeded to act arbitrarily and/or capriciously in efforts of infringing upon the Constitutional and legal rights of the Petitioner. Upon review of the record and the evidence contained therein, the Kentucky Court of Appeals will find that the Jurisdictional question was raised in the first instance (in District Court action) and through these proceedings, to no avail. Moreover, the irreparable injury and/or harm sustained by the Petitioner as a direct and proximate result of said violations. The prejudice towards the Petitioner is so apparent as well as the great extremes and/or great lengths at which Judge Bartlett has gone to violate the laws in efforts of aiding the Real Parties in Interest and their attorneys.

48. Petitioner believes that the record evidence in this matter will support that prior to bringing this matter before the Court of Appeals, she attempted to have said issues resolved in good faith. To no avail. Due to the extraordinary circumstances, lack of jurisdiction, usurpation of power, abuse of power, bias, interest, prejudice, etc. rendered in this action by Judge Bartlett, this instant Prohibition action is imperative. Moreover, the record evidence will support the ***egregious jurisdictional violations*** and ***mundane usurpation of power*** by Judge Bartlett.

49. Not only does the record evidence support that Petitioner has met the necessary prerequisite to notify the Kenton County District Court and Kenton County Circuit Court of their lack of jurisdiction, but the Kentucky Court of Appeals was also notified in Case No. 2007CA001589MR of the jurisdictional issue.

50. Petitioner believes that a reasonable mind given the facts, evidence and legal conclusions in this instant action, this Court's Case No. 2007CA001589MR and lower court proceedings, that said rulings were rendered for purposes of delay, hindering proceedings, increasing the costs of litigation, financially burdening the Petitioner in efforts to force her to abandon her pursuit of justice. Moreover, may be taken as acts done in furtherance of the fraudulent, deceitful and unlawful actions instituted by the Real Parties in Interest in their District Court action – Case No. 06-C-05059.

51. In support of the above referenced legal conclusions and/or case laws, the Petitioner further relies upon the statements provided within this instant Writ of Prohibition, *Notice of Filing Prohibition Action* as well as her pleadings and correspondence provided the Kenton County Circuit Court in Case No. 07-XX-00001, Kenton County District Court Case No. 06-C-05059, and Kentucky Court of Appeals Case No. 2007CA001589MR.

52. **DISQUALIFICATION OF JUDGE FOR INTEREST, BIAS, OR PREJUDICE**

> 42 Am.Jur. Prohibition ~27: ***Disqualification of Judge for Interest, Bias, or Prejudice*** - It is a well-recognized rule that other remedies being legally inadequate prohibition will lie to restrain a judge from proceeding in a cause which is technically within the jurisdiction of his court but as to which he is disqualified to act by reason of interest, bias, or prejudice. And it is immaterial in what manner the prejudice was engendered, or whether or not it was warranted or justified. . . .the issuance of the writ is not made to turn on the existence or nonexistence of another adequate remedy but on the showing of interest, bias, or prejudice of the judge sought to be prohibited.
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> *Potashnick v. Port City Const. Co.*, 609 F.2d 1101 (C.A.Ala., 1980) - (n. 3) Goal of judicial disqualification statute is to foster appearance of impartiality. 28 U.S.C.A. § 455. . . .(n. 4) A judge faced with a potential ground for disqualification ought to consider how his participation in a given case looks to the average person on the street; use of the word "might" in statute was intended to indicate that disqualification should follow if reasonable man, were he to know all the circumstances, would harbor doubts about judge's impartiality.

> . . .**(n. 10)** *Where trial judge did not fully disclose on the record his relationship with attorney for one of the parties and trial judge's disclosure of his prior relationship with attorney's law firm did not reveal nature of his relationship to attorney involving business investments, parties could not waive ground for disqualification based upon relationship between judge and attorney.*

KENTUCKY LAW:

> *Stopher v. Com.*, 57 S.W.3d 787 (Ky.,2001) - Recusal of a trial judge requires a showing of facts of a character calculated seriously to impair the judge's impartiality and sway his judgment; the mere belief that the judge will not afford a fair and impartial trial is not sufficient. KRS 26A.015(2)(a, e); Sup.Ct.Rules, Rule 4.300, Code of Jud.Conduct, Canon 3, subd. C(1).
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> *In re M. Ibrahim Khan, P.S.C.*, 751 F.2d 162 (C.A.6.Ky.,1984) - Bias sufficient to justify recusal of . . .judge must be personal one and not one arising from judge's view of the law.
>
> *Wells v. Walter*, 501 S.W.2d 259 (Ky.,1973) - The appearance of impartiality of a judge is next in importance only to the fact of impartiality.
>
> *Home Depot, U.S.A., Inc. v. Saul Subsidiary I Ltd. Partnership*, 2004 WL 1699614 (Ky.App.,2004) - Recusal statute is an adequate and expedient procedure to review those cases where a judge has declined to disqualify himself or herself. KRS 26A.020(1).
>
> *Miller v. Com.*, 925 S.W.2d 449 (Ky.,1996) - To successfully seek recusal of a judge, there must be a showing of facts of a character calculated seriously to impair judge's impartiality and sway his judgment.

OTHER COURTS:

> Even if the bias or prejudice of judge may actually exist, it is enough to disqualify that there be mere appearance of partiality. *Limeco, Inc. v. Division of Lime*, 571 F.Supp. 710 (1983). . . .To say that one has no present recollection falls short of meeting the acid test required of a judge whose impartiality may be reasonably drawn into question. It is well settled by all legal authorities that even if no bias or prejudice of a judge may actually exist, it is enough to disqualify that there be the mere appearance of partiality. *Limeco*, citing *Hall v. Small Business Administration*, 695 F.2d 175, 176 (1983)

53. This instant Writ of Prohibition action is warranted to disqualify Respondent for interest, bias and prejudice.

54. Petitioner believes a reasonable mind given the facts presented in the Kenton County District Court action, Kenton County Circuit Court action, Kentucky Court of Appeals action – Case Nos. 2007CA001589MR and 2007CA000834, will support that Respondent (Judge Gregory Bartlett), should have recused himself from action by reason of interest, bias and prejudice; moreover, is to be disqualified from participating in action resulting from District Court action as well as the civil lawsuit filed by Petitioner in Kenton County Circuit Court Case No. 06-CI-3270.[16] Such actions by Judge Bartlett in which this instant Prohibition action is brought to prohibit and/or restrain.

55. A reasonable mind may conclude from the facts, evidence and legal conclusions, appearance of impartiality is evidenced. Moreover, may conclude Respondent is aware of appearance of impartiality and how his participation would look to reasonable mind given such facts, evidence and legal conclusions. Thus, such reasonable mind may harbor serious doubts about Judge Bartlett's impartiality.

56. The record evidence will support that Respondent in Kenton County Circuit Court Case No. 07-XX-00001 and Case No. 06-CI-3270 **failed to disclose** for the record his relationship to Real Parties in Interest's counsel or to Real Parties (if any). Such grounds which by law cannot be waived. Moreover, Respondent, Real Parties in Interest and their counsel knew and/or should have known that Petitioner would not waive such rights and allow proceedings to be tried before him. A reasonable mind may conclude that the withholding of such pertinent and/or crucial information **(and <u>refusal</u> – although requested by the Petitioner - to disclose the nature of their relationship(s))**, that Respondent, Real Parties in Interest and their counsel indeed had malicious, corrupt, unlawful, illegal, etc. intent.

57. The record evidence in Kenton County Circuit Court Case Nos. 07XX00001 and 06CI3270 will support the recusal and/or disqualification of Respondent and showing of facts, evidence and legal conclusions supporting **"facts of character"** of Respondent calculated seriously to impair his impartiality and sway his judgment. Moreover, the repeated efforts by Respondent to take a far departure from the laws in efforts to aid his colleague and their client (Real Parties in Interest).

58. While the record evidence will support that the Kenton County District Court never retained jurisdiction in this action; moreover, that such failure was timely, properly and adequately presented to support lack of jurisdiction by the Petitioner and said lack of jurisdiction over her, said District Court elected to usurp power and retain jurisdiction in lawsuit that it had no power to do so. Furthermore, to add insult and further injury to the Petitioner, Judge Bartlett/Circuit Court was aware of lack of jurisdiction and proceeded to act arbitrarily and/or capriciously in efforts of infringing upon the Constitutional and legal rights of the Petitioner. Upon review of the record and the evidence contained therein, the Kentucky Court of

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[16] From the past actions of the Court of Appeals, the Petitioner believes that rather than this Court exercising supervisory control and issuing the applicable Order, additional time and monies will need to be expended seeking the applicable relief. The applicable and required recusal/disqualification pleadings (thus, exercising supervisor control and taking matter from Respondent and precluding him to preside as Judge in action) have been filed in that action with Judge Bartlett's refusal to comply with the laws. Therefore, Petitioner will be back with the applicable **ORIGINAL** pleading seeking the applicable relief prohibiting further acts so that legal proceedings may proceed to a jury (thus requiring additional expenses).

Appeals will find that the Jurisdictional question was raised in the first instance (in District Court action) and through these proceedings. To no avail. Moreover, the irreparable injury and/or harm sustained by the Petitioner was a direct and proximate result of said violations. The prejudice towards the Petitioner is so apparent as well as the great extremes and/or great lengths at which Judge Bartlett has gone to violate the laws in efforts of aiding the Plaintiffs/Appellees and their attorneys.

59. In support of the above referenced legal conclusions and/or case laws, the Petitioner further relies upon the statements provided within this instant Writ of Prohibition, *Notice of Filing Prohibition Action* as well as her pleadings and correspondence provided the Kenton County Circuit Court in Case No. 07-XX-00001, Kenton County District Court Case No. 06-C-05059, and Kentucky Court of Appeals Case No. 2007CA001589MR.

i. IMMUNITY NOT APPLICABLE

KENTUCKY COURTS:

Lynch v. Johnson, 420 F.2d 818 (C.A.6.Ky.,1970) - Defense of judicial immunity is a very broad one but it does not afford any protection to judge acting in clear absence of jurisdiction nor does it protect him in nonjudicial activities.

Morgan v. Dudley, 57 Ky. 693 (Ky.,1858) - A judicial officer, acting within the jurisdiction conferred on him by law, is not liable for errors of judgment, unless the result of malice or corruption.

Hollon v. Lilly, 38 S.W. 878 (Ky.,1897) - A judge acting within his jurisdiction, is not liable to a suit for damages, however illegal or erroneous his acts may be, in the absence of a malicious or corrupt motive.

Pepper v. Mayes, 81 Ky. 673 (Ky.,1884) - No person is liable in a civil action for what he has done as a judge while acting within the limits of his jurisdiction.

Sparks v. Character and Fitness Committee of Kentucky, 818 F.2d 541 (C.A.6.Ky.,1987) - Except for acts in "clear absence" of jurisdiction, judicial immunity is absolute.

Reed v. Taylor, 78 S.W. 892 (Ky.,1904) - While a judicial officer will be protected against suits for damages resulting from erroneous judgment, yet where he acts maliciously, or beyond his jurisdiction, his office is no protection.

Allsup v. Knox, 508 F.Supp. 57 (E.D.Ky.,1980) - A judge will not be deprived of immunity because action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in a clear absence of all jurisdiction.

Revill v. Pettit, 60 Ky. 314 (Ky.,1861) - One holding a judicial office may be prosecuted in damages for any acts done by him in excess of his proper jurisdiction.

King v. Cawood, 3 S.W.2d 616 (Ky.,1928) - Judge acting illegally and without jurisdiction becomes trespasser and is liable.

OTHER COURTS:

Stump v. Sparkman, 98 S.Ct. 1099 (U.S.Ind.,1978) - Judge will not be deprived of immunity because action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in clear absence of all jurisdiction.

60. Given the facts, evidence and legal conclusions presented, judicial immunity **is not** afforded to Respondent and/or Judge Ruttle because they acted in clear absence of jurisdiction – therefore, the arbitrary and unlawful acts are not protected and they are not shielded from any legal liability.

61. The acts of Respondent and District Court Judge Ruttle are a direct and proximate result of malice, corrupt motives, bias and malice towards the Petitioner and their efforts to aid Real Parties in Interest and their counsel in furtherance of fraudulent, deceitful, criminal and unlawful actions initiated against Petitioner. Thus, removing Respondent and/or lower court judges' cloak of immunity defense they may have thought they could use to aid them in committing such unlawful actions against the Petitioner.

62. Had the Petitioner not obtained the Restraining Order and Injunction against Real Parties in Interests, their counsel and others – that in which the Respondent has attempted lift over the Petitioner's objections – she would have sustained additional injury/harm. Moreover, the conspiracy (Petitioner believes has been orchestrated by Real Parties in Interest and their counsel) in furtherance of such fraudulent, corrupt, deceitful, unlawful practices, etc. may have opened the door for a number of lawsuits against Respondent, Real Parties of Interests, their counsel and other willing participants for infringement upon Petitioner's protected rights. A lawsuit in which an "immunity" defense will not support because they willingly and knowingly upon being notified elected to proceed without jurisdiction. Had the unlawful eviction sought by Real Parties in Interest and their counsel proceeded and Petitioner's property unlawfully removed, stolen, damaged, etc., all privy to such unlawful and/or criminal acts would be subject to be sued (*including their attorneys and their law firm*), <u>because courts acted **without** jurisdiction and **never** had the jurisdictional authority and/or power to grant the eviction</u>.

§ 1985 – Action for Neglect to Prevent
Every person who, having knowledge that any of the wrongs conspired to be done. . . and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act is committed, shall be liable to the party injured, or his legal representatives, for **all**

> damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; *and* *any number* of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action.

63. Given the facts, evidence and legal conclusions, a reasonable mind may conclude that Respondent and/or lower court judges in this action, have placed themselves above the laws because they thought they could commit such malicious and unlawful acts and hide behind the "immunity" cloak. However, to their disappointment no such defense can be held when they have proceeded with knowledge that they and/or court lacked jurisdiction over the subject matter. Moreover the record evidence clearly supports Respondent and Judge Ruttle were clearly aware they were proceeding without jurisdiction.

64. In support of the above referenced legal conclusions and/or case laws, the Petitioner further relies upon the statements provided within this instant Writ of Prohibition, *Notice of Filing Prohibition Action* as well as her pleadings and correspondence provided the Kenton County Circuit Court in Case No. 07-XX-00001, Kenton County District Court Case No. 06-C-05059, and Kentucky Court of Appeals Case No. 2007CA001589MR.

65. **DEFECTS IN MODE OR MANNER OF SERVICE OF PROCESS/ADEQUACY TO TEST DEFECTIVE SERVICE OF PROCESS**

Petitioner herein incorporates here arguments, evidence and legal conclusions to support this issue already in the record of the courts. Furthermore, she incorporates her pleadings attached hereto and incorporated at **EXHIBITS "VI"** and **"XIII"** (supporting exhibits referenced in these pleadings are already in the record of the courts, as if set forth in full herein.

> 63C Am.Jur2d Prohibition ~51: ***Defects in Mode or Manner of Service of Process*** - Subject to the rules regarding the adequacy of other remedies, a prohibition proceeding is the proper method of testing an inferior court's lack of jurisdiction where, because of lack of service or invalidity of service, jurisdiction has not been acquired.[17]

> 63C Am. Jur. 2d Prohibition ~20: ***Adequacy to Test Defective Service of Process*** - The remedy by way of appeal is inadequate where, in order to invoke the remedy by appeal, a defendant is compelled to enter a general appearance, and thus waive a defective service of process, and a writ of prohibition will issue to restrain further proceedings in the action

[17] *State ex rel. Ely v. Allen Circuit Court,* 304 NE2d 777.

instituted by such defective service of process.[18] ***Annotations:*** Prohibition is appropriate remedy to restrain civil action for lack of jurisdiction of the person, 92 ALR2d 247 ~5,7, 8[b]

KENTUCKY LAW:

Pennington v. Woolfolk, 79 Ky. 13 (Ky.,1880) - Proceedings instituted under an unconstitutional act may be restrained by prohibition.

Dorsey v. Kendall, 71 Ky. 294 (Ky.,1871) - The proceedings of judicial tribunals having no jurisdiction over the subject-matter are absolutely void; but where the case is within the jurisdiction of the court, and there is error in the proceedings or judgment, the judgment is voidable only, and the remedy is by an appeal.

Lowther v. Moss, 39 S.W.2d 501 (Ky.,1931) - For judgment to be valid, court must have jurisdiction of both subject-matter and person, and also have authority to render particular judgment at time of rendition.

Taylor v. Howard, 208 S.W.2d 73 (Ky.,1948) - Unless defendant is brought before court and given an opportunity to be heard, judgment against the defendant is not valid, since litigants are entitled to their day in court.

Packer v. Johnson, 211 S.W.2d 150 (Ky.,1948) - A judgment must be treated as void, where the whole record affirmatively shows absence of the condition upon which court's jurisdiction to render such judgment depended.

OTHER COURT(S):

Northwestern Nat. Cas. Co. v. Global Moving & Storage Co., 533 F.2d 320 (C.A.6.Ohio,1976) - In personam judgment is not valid against defendant unless court entering it has jurisdiction over him.

66. This instant Writ of Prohibition action is warranted in that there was defect in mode and/or manner of service of process; therefore, prohibiting the District Court and Circuit Court from obtaining jurisdiction over subject matter and/or Petitioner.

67. The laws are clear that this instant "ORIGINAL" Prohibition action is warranted to restrain and prohibit further proceedings in the action initiated in the District Court through a defective service of process. Moreover, Prohibition relief is appropriate remedy to restrain action for lack of jurisdiction of subject matter and/or Petitioner.

68. Because of the defect in mode or manner of service of process, the instant Prohibition proceeding is the proper avenue to challenge the Respondent's

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[18] *Twin City Lines, Inc. v. Cummings,* 206 S.W.2d 438; Oak Park Country Club v. Goodland, 7 N.W.2d 828m 144 ALR 1451.

court as well as the Kenton County District Court's jurisdiction over the subject matter and/or Petitioner; because lack of service or invalidity of service precludes Respondent/Circuit Court and/or lower courts from obtaining jurisdiction.

69. A reasonable mind may conclude when given the facts, evidence and legal conclusion, that the Respondent/Circuit Court and/or lower courts' judgments/orders are **VOID** for lack of jurisdiction and **cannot** be enforced and/or upheld.

70. Even if the service of process was valid (when it was not), the Constitution and/or laws governing said issues warrants that Petitioner was to have her day in court and the opportunity to be heard and/or present her defenses. However, the record evidence will support that Petitioner was deprived such right secured under the Constitution. Moreover, deprived equal protection of the laws and due process of laws.

71. As a matter of law, once the Kenton County District Court was notified of the jurisdictional issue, said court should have removed the trial of the matter from the docket.

72. Judgment(s)/Order(s) of Respondent/Circuit Court and/or lower courts are treated as **VOID**, as a matter of law, in that the record affirmatively shows absence and/or defect in service of process upon Petitioner and was not had in compliance with the statutes/laws governing said matters. Therefore, supporting lower courts lacked jurisdiction.

73. The record evidence clearly supports the Petitioner from the onset of the litigation in the Kenton County District Court made known a "special" appearance and such evidence is substantiated in the record and the jurisdictional question raised from the onset as a defense. See **EXHIBIT "VI"** attached hereto. Therefore, the Petitioner has not waived any such defense. Petitioner has repeatedly been ill advised by the courts that she should have filed certain pleadings; however, had the Petitioner listened to such advice – based upon the laws – the courts would have tricked and/or induced her into waiving her defense.

74. The laws are clear that the Kenton County District Court's and Kenton County Circuit Court's failure to address the jurisdiction issue is clear evidence of a miscarriage of justice rendered the Petitioner.

75. Jurisdiction issue was timely, properly and adequately raised in the lower courts; however, clearly ignored, warranting and supporting issuance of Prohibition relief sought herein.

76. In support of the above referenced legal conclusions and/or case laws, the Petitioner further relies upon the statements provided within this instant Writ of Prohibition, *Notice of Filing Prohibition Action* as well as her pleadings and correspondence provided the Kenton County Circuit Court in Case No. 07-XX-00001, Kenton County District Court Case No. 06-C-05059, and Kentucky Court of Appeals Case No. 2007CA001589MR.

77. **JURISDICTIONAL ISSUES**

i. Exclusive Jurisdiction Vested in Another Court.

> 63C Am.Jur2d Prohibition ~43: ***Exclusive Jurisdiction Vested in Another Court*** - A court may be restrained by prohibition from interfering with the exclusive jurisdiction acquired by another court by reason of its being the first court to assume and exercise such jurisdiction in the particular case[19] if both cases are predicated on the same cause of action, between the same parties, and brought in courts of competent jurisdiction of the same state[20]. . . In jurisdictions in which this view prevails, the aggrieved party must raise the defense of former suit pending by an appropriate pleading in the second suit and by an appeal from the decision of the court in that suit, rather than a writ of prohibition.[21]

KENTUCKY LAW:

> *Hawes v. Orr,* 73 Ky. 431 (1874) - The court first acquiring jurisdiction has a right to go on until it has performed its office in reference to the subject-matter in litigation, and will not allow itself to be ousted of its jurisdiction or permit the thing in litigation to be wrested from it, so that it cannot execute its judgment.
>
> *Akers v. Stephenson,* 469 S.W.2d 704 (Ky.,1970) - Where parties and subject matter are the same, once court of concurrent jurisdiction has begun exercise of jurisdiction over case, its authority to deal with action is exclusive and no other court of concurrent jurisdiction may interfere with pending proceedings.
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> *Riddle v. Howard,* 357 S.W.2d 705 (Ky.,1962) - When a court of competent jurisdiction acquires jurisdiction of subject matter of a case, its authority and control continue until final disposition, and, as a matter of principle and comity, another court of concurrent jurisdiction will recognize the prior jurisdiction and will not interfere by taking over the same case; but to apply such rule it is essential that the first action shall afford the parties in the second action an adequate and complete opportunity for the adjudication of their rights.

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[19] *State ex rel. Burtrum v. Smith,* 206 SW2d 558.
[20] *State ex rel. Phillips v. Polcar,* 50 Ohio St2d 279, 4 Ohio Ops 3d 445, 364 NE2d 33
[21] *State ex rel. Dickison v. Court of Common Pleas,* 28 Ohio St2d 179, 57 Ohio Ops 2d 411, 277 NE2d 210.

Delaney v. Alcorn, 193 S.W.2d 404 (Ky.,1946) - Where two actions between the same parties, on the same subject, and to test the same rights, are brought in different courts having concurrent jurisdiction, the court which first acquires jurisdiction, its power being adequate to the administration of complete justice, retains jurisdiction and may dispose of the whole controversy without interference by any court of coordinate power.

OTHER COURTS:

State ex rel. Phillips v. Polcar, 50 Ohio St.2d 279, 364 N.E.2d 33 (Ohio 1977) - (n. 3) As between courts of concurrent jurisdiction, tribunal whose power is first invoked by institution of proper proceedings acquires jurisdiction, to the exclusion of all other tribunals, to adjudicate upon whole issue and to settle rights of the parties.

Buck v. Colbath, 70 U.S. 334 (U.S.Minn.,1865) - The rule that, among courts of concurrent jurisdiction, that one which first obtains jurisdiction of a case has the exclusive right to decide every question arising in the case, is subject to some limitations, and is confined to suits between the same parties or privies seeking the same relief or remedy, and to such questions or propositions as arise ordinarily and properly in the progress of the suit first brought, and does not extend to all matters which may by possibility become involved in it.

ii. Want of Jurisdiction.

42 Am. Jur. Prohibition ~20: ***Want of Jurisdiction*** - A writ of prohibition lies to prevent a lower appellate court from reviewing on appeal a matter over which it has no jurisdiction. 132 ALR 715.

Brandon Combs v. Hon. C. Hunter Daugherty, Judge Jasamine Circuit Court, et al.; Ky Ct. App. Case No. 2005-CA-0009440-OA: . . . Brandon contends that the circuit court acted without jurisdiction in this instance. . . Brandon argues in the alternative that the circuit court erred in exercising its jurisdiction by issuing an order that was arbitrary and capricious and which violated Sections 2 and 115 of the Kentucky Constitution. Upon review of the record, we conclude that Brandon has satisfied the prerequisites for entitlement to a writ and that this Court's intervention is required to prevent a miscarriage of justice. See *Hoskins v. Maricle,* 150 S.W.3d 1 (Ky. 2004); also see, *Carpenter v. Wells,* 358 S.W.2d 524 (Ky. 1962); *Bender v. Eaton,* 343 S.W.2d 799 (Ky. 1961). . . Therefore, the Jessamine Court is hereby PROHIBITED from enforcing its orders entered March 28, 2005, and May 16, 2005. The matter is REMANDED to the circuit court for further proceedings, as needed, consistent with this opinion and order. *Brandon* at pp.3, 4, 6. (See **EXHIBIT "XIV"** attached hereto and incorporated by reference).

KENTUCKY LAW:

Commonwealth v. Yungblut, 166 S.W. 808 (Ky.,1914) - Where the circuit court has no jurisdiction of an appeal from the county court, the Court of Appeals may issue prohibition against the judge of the circuit court to restrain him from hearing and determining the appeal.

Pace v. Wolfinbarger, 420 S.W.2d 561 (Ky.,1967) - Court of Appeals will not grant relief of prohibition unless it appears that inferior court is threatening to proceed or is proceeding in matter in which it has no jurisdiction and that there is no remedy through application to intermediate court, or that although proceeding within its jurisdiction, it is exercising or about to exercise it erroneously and that there exists no adequate remedy by appeal, or otherwise, and that great injustice or irreparable injury would result to applicant if it should do so. Const. § 110.

Buckley v. Wilson, 2005 WL 3131455 (Ky.,2005) - Extraordinary writs are disfavored, but may be appropriate when a lower court is acting without jurisdiction or acting erroneously within its jurisdiction. Rules Civ.Proc., Rule 81.

James v. Shadoan, 2001 WL 1298252 (Ky.,2001) - As a general rule, in order to be entitled to prohibition relief a petitioner must show that he or she has no adequate remedy by appeal or otherwise, and either: (1) the court below is acting without or beyond its jurisdiction, or (2) he or she will suffer great and irreparable injury if the court below is acting in error and relief is not granted.

Jones v. Tartar, 215 S.W.2d 955 (Ky.,1948) - Constitutional right of Court of Appeals, to grant a writ of prohibition against an inferior court, will be exercised only if inferior court is acting without jurisdiction, or is acting within jurisdiction but erroneously, and in such manner that great and irreparable injury will follow therefrom, and the petitioner is without adequate remedy. Const. § 110.

iii. Exceeding Jurisdiction.

42 Am.Jur. Prohibition ~24: ***Exceeding Jurisdiction*** - A writ of prohibition is proper, not only in cases where the lower tribunal has no legal authority to act at all, but also in cases wherein such inferior tribunal, although having general jurisdiction over a particular class of cases, has exceeded such jurisdiction in the particular case.[22]. . . A supreme court will prohibit a state court from proceeding in an action while another action involving the same parties and issues is pending in a . . . court in another district, where the state court has refused to stay its action . . . and compliance therewith will

[22] *People ex rel. Smith v. County Ct.* 102 P.2d 476, 128 ALR 1382 - holding that prohibition may properly be invoked to require inferior court to vacate orders in excess of its jurisdiction.

entail great expense and loss to petitioner who has no right of immediate appeal from the action of the state court.[23]

KENTUCKY LAW:

Equitable Life Assur. Society v. Hardin, 178 S.W. 1155 (Ky.,1915) - Under Const. § 110, Court of Appeals may issue prohibition to inferior court proceeding beyond its jurisdiction

iv. Usurpation of Jurisdiction.

63C Am.Jur2d Prohibition ~42: ***Usurpation of Jurisdiction*** - An attempt to usurp jurisdiction over a particular matter will result in the prohibition of void proceedings[24]. . .The **All Writs Act.**[25]

Commonwealth of Kentucky v. Hon. Sean Delahanty, Judge, Jefferson District Court, and Juan Lopez Cordova. . .; Ky. Ct. App. Case No. 2006-CA-000046-MR: . . . The Supreme Court of Kentucky has ruled that the decision to grant or deny a petition falls within the discretion of the court in which it was filed. . . Thus, we will not disturb the court's decision regarding a writ of prohibition absent an abuse of discretion. A trial court has abused its discretion if its decision was arbitrary, unreasonable, unfair or unsupported by sound legal principles. *Jaroszewski v. Flege,* 204 S.W.3d 148, 150 (Ky. App. 2006).. . . The issuance of the writ is only under exceptional circumstances in order to prevent a miscarriage of justice. See Murphy v. Thomas, Ky., 296 S.W.2d 469 (1956); *Shumaker v. Paxton,* Ky., 613 S.W.2d 130 (1981); and *Graham v. Mills,* Ky., 694 S.W.2d 698 (1985). . .We are mindful that the standard of review regarding such original actions is abuse of discretion. *Hoskins,* 150 S.W.3d at 6. However, by failing to address the Commonwealth's claims, the circuit court acted arbitrarily; therefore, we conclude that it abused its discretion. *Commonwealth* at p. 7, 11 - 12. (See **EXHIBIT "XV"** attached hereto and incorporated by reference).

KENTUCKY LAW:

Union Light, Heat and Power Co. v. U. S. Dist. Court, 588 F.2d 543 (C.A.6.Ky.,1978) - Prerogative writs of mandamus and prohibition are extraordinary remedies to be used only in exceptional circumstances amounting to judicial usurpation of power.

Goldsmith v. Owen, 26 S.W. 8 (Ky.,1894) - The writ will issue only in cases of usurpation of power or jurisdiction by an inferior court.

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[23] *Re Phelan,* 274 NW 411, 112 ALR 1345.
[24] *Price v. Goldman,* 525 P2d 598, *State ex rel. Preissler v. Dostert,* 260 SE2d 279.
[25] 28 USCS ~1651(a), 28 USCA ~1651(a).

v. Adequacy to Test Jurisdictional Defects

> 63C Am.Jur2d Prohibition ~19: ***Adequacy to Test Jurisdictional Defects*** - Where the lower court is without jurisdiction to act, the availability or adequacy of an appellate remedy is immaterial to the issuance of a writ of prohibition.

78. Writ of Prohibition is to be granted to prevent Respondent/Circuit Court and/or lower courts from abusing the judicial process and efforts to enforce their null/void judgments/orders known to be illegal and/or unlawful for malicious intent to injure Petitioner.

79. Prohibition relief sought in this instant "ORIGINAL" action is to be granted to restrain Respondent/Circuit Court and/or lower courts from interfering with the exclusive jurisdiction of the Kenton County Circuit Court in Case No. 06-CI-3270, by reason it being the **first** court to obtain jurisdiction over the subject matter and/or parties to the actions in its court and the District Court.

80. A reasonable mind may conclude when given the facts, evidence and legal conclusions, that both cases (Kenton County Circuit Court Case No. 06-CI-3270 and Kenton County District Court Case No. 06-C-05059) are predicated on the same cause of action, between the same parties and Petitioner brought her action in a competent court to here the controversy and award the amount of damages sought (i.e. *monetary damages **which** exceeds the District Court's jurisdiction*). See **EXHIBITS "IV"** and **"XVI"** (Brief Only – Exhibits are already in the record of the courts, and is attached hereto and incorporated by reference as if set forth in full herein).

81. The record evidence supports Petitioner has met the prerequisites for bringing Prohibition action and that lower courts and Real Parties in Interest were timely, properly and adequately notified of pending litigation in the Kenton County Circuit Court Case No. 06-CI-3270. Moreover, a reasonable mind when given the facts, evidence and legal conclusions, may find that Real Parties in Interest and/or their counsel's mad dash to the District Court upon learning that Petitioner was seen going there, is sufficient to sustain their knowledge that the filing of their District Court action was prohibited in that Petitioner filed her case in the Circuit Court first. Furthermore, Real Parties of Interest and/or counsel's knowledge that the District Court did not have jurisdiction over the lawsuit they were filing.

82. As a matter of law, the Kenton County Circuit Court in Case No. 06-CI-3270 is to carry on with proceedings as it is the **FIRST** court to obtain jurisdiction over the subject matter and/or parties named in both actions. *The laws clearly prohibits Circuit Court to be ousted of litigating case and surrendering to the District Court who clearly did not have jurisdiction and upon which its jurisdiction was sought through fraud and deceit by way of Real Parties in Interests and their counsel*.

83. The laws are clear that given the facts, evidence and legal conclusion, the Kenton County Circuit Court in Case No. 06-CI-3270 has **exclusive** jurisdiction over case and the District Court may not interfere and/or circumvent the laws through its illegal/unlawful actions.

84. A reasonable mind may conclude when given the facts, evidence and legal conclusions, that the **void/null** judgments/orders of Respondent/Circuit Court and District Court were done to injure/harm the Petitioner. Moreover, with knowledge that the District Court **never** had jurisdiction over her and/or the subject matter and that through such abuse of the judicial process, judges/courts acted with malice and ill motive refusing to surrender the matter to the **first-court-of-action** (Circuit Court in Case No. 06-CI-3270) and dismissing lawsuit Real Parties of Interest filed in the District Court under Case No. 06-C-05059.

85. The record evidence will support that the **first** action filed in Circuit Court Case No. 06-CI-3270 will afford the parties in both actions an adequate and complete opportunity for the adjudication of their claims. Moreover, provide the Petitioner with the opportunity to exercise her rights under the Constitution and other governing laws upon which her action has been brought – allowing a **jury** to decide issues presented.

86. Prohibition relief sought herein, is to prevent Respondent/Circuit Court from reviewing on appeal a matter which it has no jurisdiction and attempts to affirm the District Court judgment which is **VOID** – over the Petitioner's objections. Respondent/Circuit Court, as a matter of law, was to dismiss the District Court action for lack of jurisdiction; however, failed to do so. Therefore, warranting this instant "ORIGINAL" Prohibition action.

87. The Respondent/Circuit Court and/or lower courts entered judgment(s)/order(s) that are arbitrary, capricious and clearly violates statutes/laws governing said matters. Prohibition relief is thereby warranted to prevent a miscarriage of justice and prevent and/or restrain Respondent/Circuit Court from enforcing its order entered and to have it dismiss actions below (Circuit Court Case No. 07-XX-00001 and District Court Case No. 06-C-05059) for lack of jurisdiction over subject matter and/or Petitioner.

88. The record evidence further supports issuance of Prohibition relief in that Respondent/Circuit Court refused to dismiss District Court action for lack of jurisdiction, but elected to entertain an appeal over which it lacked jurisdiction and refused to dismiss action for lack of jurisdiction as sought by the Petitioner. Going as far as affirming the District Court's judgment.

89. The record evidence will support that Respondent/Circuit Court has elected to proceed in a matter in which it knew and/or should have known it lacked jurisdiction. Thus, Prohibition action is necessary because no adequate remedy by appeal is available to Petitioner and a great injustice and/or irreparable injury has occurred.

90. While such *extraordinary* writs, such as this instant action, are greatly disfavored, said action meets the ***exceptional*** requirements in that Respondent/Circuit Court and/or lower courts acted **without** jurisdiction.

91. Should the Kentucky Court of Appeals fail to uphold the rights afforded it under the Constitution and other governing laws and correct the injustice and/or miscarriage of justice rendered the Petitioner, great irreparable injure/harm is inevitable.

92. The Prohibition relief Petitioner seeks is proper because Respondent/Circuit Court and/or lower courts have no legal authority to act at all and because said courts have exceeded jurisdiction in this action in which the statutes/laws are clear they do not have.

93. The record evidence clearly support Respondent/Circuit Court and/or lower courts usurped jurisdiction over lawsuit; thus, warranting Prohibition relief sought herein. Even laws ***well over 100 years old*** supports it is a well-settled matter that writ is to issue in that Respondent/Circuit Court and/or lower courts clearly usurped power of jurisdiction.

94. Even if the Petitioner had another remedy available to her by way of appeal (*which the laws are clear she does not*), it is ***immaterial*** because Respondent/Circuit Court and/or lower courts to this action acted **without** jurisdiction and/or **never** obtained jurisdiction over the subject matter and/or Petitioner. Therefore, Writ of Prohibition is to issue to remedy such wrongs and/or unlawful acts rendered the Petitioner.

95. The record evidence clearly supports Respondent/Circuit Court's and/or lower courts abuse of discretion – warranting the Prohibition relief sought herein.

96. The record evidence will support abuse of discretion in that judgment(s)/order(s) of Respondent/Circuit Court and/or lower courts are arbitrary, capricious, unreasonable, unfair and unsupported by legal principals – clearly a far departure from the laws governing said matters. Therefore, warranting issuance of Writ of Prohibition and the relief sought therein. Moreover, it is evident that Prohibition relief is warranted under such exceptional circumstances in order to prevent the miscarriage of justice addressed herein and also known to the Kentucky Court of Appeals.

97. In support of the above referenced legal conclusions and/or case laws, the Petitioner further relies upon the statements provided within this instant Writ of Prohibition, *Notice of Filing Prohibition Action* as well as her pleadings and correspondence provided the Kenton County Circuit Court in Case No. 07-XX-00001, Kenton County District Court Case No. 06-C-05059, and Kentucky Court of Appeals Case No. 2007CA001589MR to warrant issuance of relief sought in Writ of Prohibition.

98. **MISCARRIAGE OF JUSTICE/IRREPARABLE INJURY AND/OR HARM**

> *Kentucky Department of Military Affairs and Kentucky National Guard v. Hon. Roger L. Crittenden, Judge, Franklin Circuit Court and Robert A. Jones, et al.*, Ky. Ct. App. Case No. 2001-CA-000889-OA: . . .Hence, this original action, which claims that the circuit court is acting without jurisdiction and that petitioners are entitled to dismissal.

. . In this original action, petitioners allege that they would suffer irreparable injury from which they have no adequate remedy by appeal were the actions allowed to proceed because they would "forever lose or forfeit some of the protections of the . . . doctrine,. . .However, remedy by appeal is **not** always the controlling consideration as ". . . it would be a most inept ruling to deny the writ, require a trial on the merits, and then on an appeal be forced to reverse the case on the very question which is now before us." *Chamblee v. Rose,* Ky., 249 S.W.2d 775, 777 (1952). In addition, although we recognize that the circuit court was exercising its discretion when it denied petitioners' motion, we have determined that the question presented this court in this original action is one of law. Therefore, this court is not restricted to the abuse of discretion standard of review and may issue its opinion without deferring to the trial court. *Southeastern United Medigroup, Inc. v. Hughes,* Ky., 952 S.W.2d 195, 199 (1997); *Sisters of Charity Health Systems, Inc. v. Raikes,* Ky., 984 S.W.2d 464 (1998). . . . In accordance with the views expressed in this opinion and order, the respondent trial court is hereby DIRECTED to issue an order dismissing the actions filed by the real parties in interest for lack of subject matter jurisdiction. *Kentucky Department* at pp. 2, 5, 12-13 (See **EXHIBIT "XVII"** attached hereto and incorporated by reference).

KENTUCKY LAW:

Bender v. Eaton, 343 S.W.2d 799 (Ky.,1961) - (n. 3) In special cases Court of Appeals will entertain petition for prohibition on claim that lower court was acting erroneously within its jurisdiction in absence of showing of irreparable injury, provided a substantial miscarriage of justice will result if lower court is proceeding erroneously and correction of error is necessary and appropriate in interest of orderly judicial administration.. . . .(n. 4) Petitioners seeking order prohibiting lower court from enforcing an order requiring production for adversary's inspection of written information which petitioners had obtained from experts in preparation for trial, did not have any other adequate remedy and compliance with order would result in a substantial miscarriage of justice.

Independent Order of Foresters v. Chauvin, 175 S.W.3d 610 (Ky.,2005) - (n. 13) The usual requirement that a petitioner show great and irreparable injury is not an absolute prerequisite to the issuance of a writ of prohibition. . . .(n. 14) In certain special cases the Supreme Court will entertain a petition for prohibition in the absence of a showing of specific great and irreparable injury to the petitioner, provided a substantial miscarriage of justice will result if the lower court is proceeding erroneously, and correction of the error is necessary and appropriate in the interest of orderly judicial administration.[26]

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[26] Nos. 13 & 14 - The usual requirement that a petitioner show great and irreparable injury, however, "is not an absolute prerequisite" to the issuance of a writ. *Bender*, 343 S.W.2d at 801. As noted above, we have carved out a limited exception to this requirement for "certain special cases." But the exception is very limited:

Grange Mut. Ins. Co. v. Trude, 151 S.W.3d 803 (Ky.,2004) - (n. 4) Where the action for which the writ of prohibition is sought would violate the law, a court may peek behind the curtain, i.e., beyond the petitioner's failure to meet the great and irreparable harm test, at the merits of the petitioner's claim of error by the lower court.[27]

99. To deprive Writ would clearly support arbitrary/capricious acts; moreover, clear prejudice and bias in that ruling would go against previous decision rendered by the Kentucky Court of Appeals on the same issue and has been brought as an *"original"* action against the appropriate party(s) as this Court's January 3, 2008 Order in Case No. 2007-CA-001589-MR indicated had to be brought.

100. This "ORIGINAL" Prohibition action is clear that Respondent/Circuit Court and/or lower courts acted without jurisdiction and that Petitioner is entitled to dismissal of lower court actions for lack of jurisdiction over the subject matter and/or Petitioner. Thus, supporting argument of miscarriage of justice presented herein and the granting of the relief sought through this Prohibition action.

101. For the Kentucky Court of Appeals to deny writ, Petitioner will suffer irreparable injury/harm from which there is no adequate remedy by appeal because she would forever lose protected rights secured under the Constitution and other governing laws. Furthermore, such denial would be a far departure from this Court's previous decisions and/or rulings on said issues. Leaving a reasonable mind to conclude that such contrary ruling and entered with ill motives – acts deliberately

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> [I]n certain special cases this Court will entertain a petition for prohibition in the absence of a showing of specific great and irreparable injury to the petitioner, provided a substantial miscarriage of justice will result if the lower court is proceeding erroneously, and correction of the error is necessary and appropriate in the interest of orderly judicial administration.
>
> *Bender,* 343 S.W.2d at 801. We have tended to apply this exception only in those *617 limited situations where the action for which the writ is sought would blatantly violate the law, for example, by breaching a tightly guarded privilege or by contradicting the clear requirements of a civil rule. See *Wal-Mart Stores, Inc. v. Dickinson,* 29 S.W.3d 796, 803 (Ky.2000) (noting that deposing an attorney or paralegal involved in the case would normally fall under the "certain special cases" exception because of the attorney-client privilege); id. at 801-02 (noting that a judge's **failure** *to include findings of fact* as required by CR 34.01 in a premises inspection order met the exception); *Bender,* 343 S.W.2d at 803 (holding that a judge's order for production of a doctor's report was a violation of the then recently enacted Civil Rules and thus fell under the exception).

[27] We have also held, however, that a *showing of great and irreparable harm* in this second class of cases is not "an absolute prerequisite" FN7 for the issuance of a writ. The requirement may be put aside in " certain special cases ... [where] a substantial miscarriage of justice will result if the lower court is proceeding erroneously, and correction of the error is necessary and appropriate in the interest of orderly judicial administration." FN8 But these "certain special cases" are exactly that-they are rare exceptions and tend to be limited to situations where the action for which the writ is sought would violate the law, e.g. by breaching a tightly guarded privilege FN9 or by contradicting the requirements of a civil rule.FN10 In those rare cases, a court may peek behind the curtain, i.e., beyond the petitioner's failure to meet the great and irreparable harm test, at the merits of the petitioner's claim of error by the lower court.

done to deprive the Petitioner equal protection of the laws and due process of laws that this Court has afforded to others.

102. A reasonable mind may also conclude that based upon the facts, evidence and legal conclusions, that for the Court of Appeals to deny the writ asserting that Petitioner "had another remedy by way of appeal" (in which she does not), would be a gross injustice and/or miscarriage of justice. Furthermore, a reasonable mind may conclude from the rulings, delays, etc. in the matters brought under the District Court lawsuit are deliberately done to delay/hinder proceedings, increase the cost of litigation, subject the Petitioner to needless financial burdens in defending action in hopes of forcing her to abandon her legal and constitutional rights. The facts, evidence and legal conclusions supports an order (as that in this Court's Case No. 2001-CA-000889-OA) is warranted directing the Respondent/Circuit Court and/or lower courts to dismiss the actions (Circuit Court Case No. 07-XX-00001 and District Court Case No. 06-C-05059) for lack of jurisdiction and dismissing any and all claims the Real Parties in Interest are asserting they are entitled to under lower court actions.

103. The record evidence clearly supports the Respondent/Circuit Court and/or lower courts' deliberately with malice, prejudice, ill motives, etc. entered judgment(s)/order(s) known to be clearly erroneous and a far departure from the laws; thus, supporting substantial miscarriage of justice to Petitioner and warranting the Writ of Prohibition relief sought herein in the interest of orderly judicial administration.

104. While the Kentucky Court of Appeals was fully aware of what was taking place in the Circuit Court and/or lower court actions and had authority to intervene and prohibit such wrongs, injustice and/or miscarriage of justice, it failed to do so leaving the Petitioner with no other option but to bring this instant Prohibition action. This Court's January 3, 2008, order entered in Case No. 2007CA001589MR is evidence that this Court was aware of the remedy the Petitioner had available to her; however, rather than exercise its supervisory power and automatically correct the wrongs brought to its attention it dismissed action causing additional delay, time and expenses to bring this instant "ORIGINAL" Writ of Prohibition action.

105. A reasonable mind may conclude from the Kentucky Court of Appeals January 3, 2008 ruling in Petitioner's Case No. 2007CA001589MR, that this court by stating in its order, "However, the record shows that Judge Bartlett is not a party to Appeal No. 2007-CA-001589-MR. A separate document fully complying with all requirements of CR 76.36 would have been necessary for the docketing of an original action," that this instant Writ of Prohibition action filed by the Petitioner is sufficient and brought pursuant to CR 76.36 (complying with **all** requirements) and/or the applicable statutes/laws governing said matters. See **EXHBIT "I"** attached hereto and incorporated by reference as if set forth in full herein.

106. Now that Petitioner has brought this "ORIGINAL" Writ of Prohibition action and seeing that this Court has granted such writs in the past for lack of jurisdiction by lower courts, it will be interesting to see whether the Petitioner is extended "equal" protection and due process of laws afforded by this

Court in previous rulings by it on such issue(s) as presented herein.

107. The laws require that writ lies to prevent the Judge Bartlett and/or the Kenton County Circuit Court exercising jurisdiction and/or reviewing on appeal the lawsuit before it because neither the Kenton County District Court nor its Court could proceed because of lack of jurisdiction over the Petitioner and/or the subject matter.[28]

108. WOP is the adequate remedy available to the Petitioner in that she has not waived her rights to service of process in the original action filed in the Kenton County District Court. The applicable pleadings in this action has been filed to support that Petitioner has not waived any such rights and the laws clearly prohibits the Kentucky Court of Appeals from attempting to have the Petitioner waive any such protected rights and enter a "general appearance" to seek a remedy to this matter on appeal. Prohibition action is the applicable and/or appropriate remedy to restrain action for lack of jurisdiction over the Petitioner.

109. The Kenton County District Court in which this action was appealed from to the Kenton County Circuit Court, ***lacked jurisdiction*** of the Petitioner and/or subject matter in that process was not had in accordance with the laws – moreover, Petitioner waived no such rights as to service of process in the Kenton County District Court action nor jurisdiction of said court over her;

110. The jurisdictional question raised in Petitioner's pleading in the Kenton County District Court action, as well as on appeal to the Circuit Court clearly sustains that said argument has been timely, properly and adequately presented to put the Circuit Court and Judge Bartlett on notice of said violations and/or lack of ability to entertain the Real Parties in Interest in that action's lawsuit.

111. Petitioner believes that this Prohibition action is the only avenue available to her in that said belief is sustained by laws in that the lower courts never obtained jurisdiction over action.

112. Judge Bartlett and/or the Circuit Court was timely, properly and adequately placed on notice that Petitioner would be seeking said relief through the applicable action.

113. The Petitioner will suffer irreparable injury/harm if Writ of Prohibition is not granted.

114. This Prohibition action is proper to restrain and/or prevent the Circuit Court from taking jurisdiction and seeks the enforcement of the laws mandatorily required to prohibit such wrongs, injustices, miscarriage of justice, abuse of discretion, usurpation of power, etc., as evidence in this action.

115. The Prohibition relief sought through this instant "ORIGINAL" action in which the Petitioner seeks be performed by the Kentucky Court of Appeals

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[28] 42 Am. Jur. Prohibition ~20: **Want of Jurisdiction** - A writ of prohibition lies to prevent a lower appellate court from reviewing on appeal a matter over which it has no jurisdiction. 132 ALR 715.

is mandated by statutes/laws governing said matters and is supported by past decisions rendered by it, the Supreme Court as well as other courts.

116. Judge Bartlett and/or Circuit Court did not exercise sound discretion and clearly acted arbitrarily. Moreover, the record evidence will support lower courts' actions in the handling of the Kenton County District Court lawsuit was arbitrary.

117. The record evidence supports abuse of discretion and/or conduct amounting to usurpation of judicial power by Judge Bartlett and/or Circuit Court;

118. Circuit Court through Judge Bartlett's actions: **(a)** is proceeding in a manner contrary to laws; **(b)** is seeking to enforce a ruling of the Kenton County District Court which ***lacked jurisdiction*** from the outset of case and throughout – never retained jurisdiction – and Petitioner is not aware of any other remedy other than this instant WOP action brought before this Court – in that any such appeal (as a matter of law) is not available to her due to the lower courts' lack of jurisdiction; and **(c)** is acting with such malice, bias and prejudice, that Petitioner has been rendered a great injustice, and, as a direct and proximate result, if this Court does not intervene and grant WOP, the Petitioner will sustain irreparable injury and/or harm and be deprived rights secured under the U.S. Constitution and Kentucky Constitution and other applicable laws which govern said matters;

119. The record evidence will support: **(a)** Petitioner has no other adequate remedy considering the circumstances of this case; **(b)** Petitioner will be damaged and/or prejudiced in a way that is not correctable on appeal and stands to lose rights secured under the Constitution and/or laws; and **(c)** The ruling of the Kenton County Circuit Court rendered by Judge Bartlett is null and/or void in that said court never obtained jurisdiction (d) The ruling of the Kenton County District Court rendered by Judge Ruttle is null and/or void in that said court never obtained jurisdiction.

120. The actions of Judge Bartlett have been done for the purposes of: **(a)** prejudice towards Petitioner; **(b)** hindrances and delay of proceedings; **(c)** increase the cost of litigation; **(d)** rendering special favors to Real Parties in Interest (Plaintiffs/Appellees in the lower court action) in efforts of forcing the Petitioner to abandon her claims; **(e)** depriving the Petitioner rights secured under the U.S. Constitution, Kentucky Constitution, Civil Rights Act, Landlord and Tenant Act, and other laws governing the issues presented the court.

121. Enforce the Kenton County Circuit Court in Case No. 07-XX-00001 to cease from unlawful practices, in that the acts of Judge Bartlett/Circuit Court is done for unnecessary delay and to deny the Petitioner justice and/or rights secured under the Constitution and other governing laws/statutes;

122. Real Parties of Interest in this action were never entitled to any relief they sought in that Kenton County District Court lacked jurisdiction and said parties simply brought "malicious prosecution seeking relief the laws are clear they were not entitled to. While the Real Parties of Interest were notified of said error, they did nothing to correct it.

123. Appearance of impropriety is evident.

124. In support of the above referenced legal conclusions and/or case laws, the Petitioner further relies upon the statements provided within this instant Writ of Prohibition, *Notice of Filing Prohibition Action* as well as her pleadings and correspondence provided the Kenton County Circuit Court in Case No. 07-XX-00001, Kenton County District Court Case No. 06-C-05059, and Kentucky Court of Appeals Case No. 2007CA001589MR.

CONCLUSION

For the above foregoing arguments, evidence and legal conclusions, the record evidence in this matter will support that the Petitioner has been patient, has provided timely, proper and adequate pleadings to notify Judge Bartlett and/or the Circuit Court of the Kenton District Court's lack of jurisdiction as well as Circuit Court's lack of jurisdiction. To no avail. As a matter of law and/or statutes governing said matters, it is Judge Bartlett's and/or the Circuit Court's legal obligation to dismiss action before it arising from Kenton County District Court Case No. 06-C-05059. Therefore, mandate(s) from the Kentucky Court of Appeals prohibiting and/or restraining unlawful acts of Judge Bartlett and/or the Circuit Court and require compliance with the laws and dismiss actions (Circuit Court Case No. 07-XX-00001 and District Court Case No. 06-C-05059) and to prohibit and restrain further acts by Real Parties in Interest, their counsel and/or representatives on trying to recover under such **VOID** and/or NULL judgments/orders of these lower courts in said actions and seeking to have the Petitioner unlawfully removed and deprived of rights afforded to her under the Constitution, Civil Rights laws, Landlord and Tenant laws and other governing laws.

Petitioner has a clear right, as a matter of law, to demand the performance of the act sought to be enforced in this Prohibition action. Moreover, the record evidence will support that Judge Bartlett's and/or Circuit Court's decision was arbitrary and/or capricious.

PRAYER and RELIEF SOUGHT

WHEREFORE, PREMISES CONSIDERED, for the above and foregoing reasons, the facts, evidence and legal conclusion supporting relief sought herein, Petitioner prays that the Kentucky Court of Appeals grant Writ of Prohibition and issue mandate accordingly. Furthermore, the

Petitioner seeks the following relief:

125. Issuance of a Writ of Prohibition by the Kentucky Court of Appeals directed to Respondent Judge (Gregory M. Bartlett), directing Judge Bartlett to refrain and desist from any further proceedings in action No. 07-XX-00001 and requiring that this Petitioner as defendant in the Kenton County District Court action be bound by judgment/orders entered and making her liable for the damages and/or claims asserted against her.

126. Issuance of a Writ of Prohibition by the Kentucky Court of Appeals directed to Respondent Judge (Gregory M. Bartlett), directing Judge Bartlett to refrain and desist from any further proceedings in action Kenton County Circuit Court Case No. 06-CI-3270 if the supervisor powers and/or controls afford this Court the right to grant such relief. In so doing it will save time and costs in requiring another action seeking this relief in that the applicable motion for disqualification and/or recusal has been filed in said lawsuit.

127. Disqualification of Respondent (Gregory M. Bartlett) as judge presiding over lawsuit in Kenton County Circuit Court Case No. 06-CI-3270, *as a matter of well-settled law*, for purposes of interest, bias, prejudice, malice, etc. and/or any an all other reasons known to this Court to warrant disqualification.

128. Issuance of a Writ of Prohibition by the Kentucky Court of Appeal directed to Respondent Judge and Circuit Court, directing Judge Bartlett and/or Circuit Court to dismiss the Kenton County Circuit Court Appeal action No.07-XX-00001 for lack of jurisdiction over the Petitioner and/or subject matter.

129. Issuance of a Writ of Prohibition by the Kentucky Court of Appeal directed to Respondent Judge and/or Circuit Court, directing the dismissal of the Kenton County District Court action No. 06-C-05059 for lack of jurisdiction over the Petitioner (who is the Defendant in district court action) and/or subject matter.

130. Petitioner respectfully request this Court to accept this petition, to issue its rule to

show cause to the respondent court, and, upon completion of the briefing, to make the rule to show cause absolute and to direct the Respondent and court to proceed in the confines of its jurisdiction and to dismiss the actions in Kenton County Circuit Court Case No. 07-XX-00001 and Kenton County District Court Case No. 06-07-C-05059.

131. Issuance of a Writ of Prohibition by the Kentucky Court of Appeal directed to Respondent Judge and/or Circuit Court, directing order issue to prohibit and restrain Real Parties in Interest, their counsel and/or representatives to cease from unlawful eviction acts and actions prohibited by law to deprive the Petitioner of her residence.

132. That Judge Bartlett and/or Circuit Court be prohibited and/or restrained from usurping jurisdiction, exceeding jurisdiction and other reasons for granting of said relief as noted above in this Prohibition action, and dismiss actions in Circuit Court Case No. 07-XX-00001 and District Court Case No. 06-C-05059;

133. Issuance of Order directing that all monies paid into escrow in Circuit Court Case No. 07-XX-00001 be returned to the Petitioner in that said court and District Court in Case No. 06-C-05059 never had jurisdiction; or, require that said monies that Petitioner has paid into escrow (As referenced by receipt as "rent escrow MDFO(K(W2))" be transferred to Petitioner's Civil Action in the Kenton County Circuit Court Case No. 06-CI-3270 in that the appropriate pleadings and relief sought has been filed with said Court to address the disbursement of same – to be decided by a jury. See **EXHIBIT "XVIII"** attached hereto and incorporated by reference.

134. For the reasons set forth in this instant **ORIGINAL** *Writ of Prohibition* action above;

135. That Petitioner be granted any and all monetary relief associated with the expenses and/or defense of this action; and

136. Grant the Writ of Prohibition relief sought herein and any and all other applicable relief the Court of Appeals deems just, fair and appropriate to correct the injustice complained of herein.

This 2nd day of ~~January~~ February, 2008.

Respectfully Submitted,

Denise Newsome

Denise Newsome
Post Office Box 14731
Cincinnati, Ohio 45250
(513) 680-2922

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the forgoing pleading was mailed via U.S. Mail first-class mail on:

Honorable Gregory M. Bartlett
Vice Chief Regional Circuit Judge
Kenton County Judicial Center
230 Madison Avenue, Suite 701
Covington, Kentucky 41011

Honorably Jack Conway
Office of the Attorney General
700 Capitol Avenue, Suite 118
Frankfort, Kentucky 40601

Gailen W. Bridges, Esq.
732 Scott Street
Covington, Kentucky 41011
Attorney for Real Parties in Interest

Dated this 2nd day of ~~January~~ February, 2008.

Denise Newsome

DENISE NEWSOME

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-001589-MR

DENISE NEWSOME — APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT
ACTION NO. 07-XX-00001

GARY MARTIN — APPELLEE

ORDER

** ** ** ** **

BEFORE: MOORE AND WINE, JUDGES; ROSENBLUM,[1] SENIOR JUDGE.

Appellant has filed a "Motion to Suspend Action" pursuant to CR 76.38. She asks the Court to suspend the effectiveness of its order of November 21, 2007, dismissing the appeal "so that the Petitioner may exercise her right under the *Seventh* Amendment of the U.S. Constitution and Kentucky Constitution and have a jury decide the issues pending." According to the motion, this refers to Action No. 2006-CI-03270 that is currently pending before the Kenton Circuit Court.

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[1] Senior Judge Paul W. Rosenblum sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Pursuant to CR 76.38(2), the Court may suspend the effectiveness of an order pending disposition of a motion to reconsider that order. However, appellant states that this Court has "deliberately and intentionally attempted to mislead" her in characterizing a document entitled "Notice of Receipt and Request for Clarification" that she previously tendered as a motion to reconsider.

The Court notes that the record includes a notice of deficient pleading, returning "appellant's motion to reconsider" for the lack of a filing fee. Since appellant asserts that she was not attempting to file a motion to reconsider, the Court determines that the notice of deficient pleading was a clerical mistake and hereby ORDERS that the $125.00 check tendered by appellant as a filing fee on December 10, 2007, be RETURNED to appellant.

It is further ORDERED that appellant's motion to suspend action be DENIED. Without a pending motion to reconsider, the Court has no basis for suspending the effectiveness of the order of November 21, 2007.

Further, since appellant sought clarification of that order, the Court states as follows. Appellant incorrectly invoked this Court's jurisdiction by filing a notice of appeal from a final order entered by the Kenton Circuit Court, sitting in an appellate capacity. However, there is no appeal as a matter of right from an appellate decision of a circuit court and appellant's sole remedy would have been a motion for discretionary review. *See* KRS 22A.020(5); CR 76.20. *See also Beard v. Commonwealth ex rel. Shaw,* 891 S.W.2d 382 (Ky. 1994); *Commonwealth v. Hurd,* 612 S.W.2d 766, 768

(Ky.App. 1981). Appellant did not file a motion for discretionary review and the matter remained at all times an improperly taken appeal, which the Court dismissed. While appellant appears to believe that this Court's decision indicates bias towards her, our decision is firmly rooted in the law and is not the result of any kind of bias.

Appellant also asserts that this Court improperly failed to consider her petition for writ of mandamus. The record shows that appellant filed a "Show Cause Pleading Petition for Writ of Mandamus" in response to an order requiring her to show cause why the appeal should not be dismissed as improperly taken. The document was captioned to Appeal No. 2007-CA-001589-MR and indicated that it was an appeal from Kenton Circuit Court, Action No. 07-XX-00001. Yet, it went on to show appellant as "petitioner" and the Hon. Gregory M. Bartlett, in his official capacity as Kenton County Circuit Court Judge as "respondent." However, the record shows that Judge Bartlett is not a party to Appeal No. 2007-CA-001589-MR. A separate document fully complying with all requirements of CR 76.36 would have been necessary for the docketing of an original action.[2]

Finally, we note that, contrary to the concern expressed by appellant, the assignment of Senior Judge Rosenblum to this case was entirely proper. We also note appellant's statement that "[i]t is not clear to the Petitioner why Justice Wine signed the November 21, 2007 Order rather than Justice Moore; in that Justice Moore appears to the the Justice assigned to Petitioner's District." However, members of the Kentucky Court

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[2] However, the Court notes that one may not challenge an order fully disposing of an action by original proceedings pursuant to CR 76.36.

of Appeals have statewide jurisdiction. In addition, Judge Wine, rather than Judge Moore, is the Presiding Judge on this matter. Judge Moore and Senior Judge Rosenblum sit as Associate Judges.

ENTERED: 1/3/08

JUDGE, COURT OF APPEALS

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

NO. 2008-CA-000242-OA

DENISE NEWSOME — PETITIONER

vs. **ORIGINAL** ACTION
FROM KENTON COUNTY CIRCUIT COURT
ACTION NO. 07-XX-00001

HONORABLE GREGORY M. BARTLETT, IN HIS OFFICIAL CAPACITY AS KENTON COUNTY CIRCUIT COURT JUDGE AND
KENTON COUNTY CIRCUIT COURT — RESPONDENT

And

GARY M. MARTIN, BERNICE MARTIN,
DENNIS DONNELLAN, and BETTY DONNELLAN,
d/b/a GMM PROPERTIES — REAL PARTIES IN INTEREST

PETITIONER'S MOTION FOR FINDINGS AND FACTS PURSUANT TO CR 52;
MOTION FOR RECONSIDERATION OF ORDERS PURSUANT TO CR 76
AND
NOTICE TO REQUEST THE INTERVENTION BY LEGISLATURE[1]

COMES NOW Petitioner Denise Newsome ("Petitioner") and hereby provides this Court with her *Motion for Findings and Facts Pursuant to CR 52; Motion for Reconsideration of Orders Pursuant to CR 76 and Notice to Request The Intervention By Legislature* ("MFFFMRONTR"). Through this instant pleading, the Petitioner seeks this Court's findings and facts, legal conclusions and evidence it has relied upon in its May 7, 2008 Order filed with this Court pursuant to CR 52; that this Court reconsider its ruling made in May 7, 2008 Order and vacate said Order and enter the required/applicable findings and facts in accordance with the statutes/laws governing said matters; and hereby PLACE THIS COURT ON NOTICE that Petitioner intends to seek the intervention of the Legislature in this matter (if necessary) to conduct an Investigation, hold Hearings to address the

[1] Boldface, Italics, underline, etc. added for emphasis. Retrieved information from and/or cut and pasted information from legal resources used such as WestLaw and other legal resources/statutes/laws, etc.

Exhibit "79"

actions of this Court as well as other willing participants who have failed and/or neglected to prevent the civil and criminal wrongs brought to its attention and failure to uphold the laws of the Constitution (Kentucky and United States); moreover, will seek the creation, amendment, enactment, etc. of laws to deter such wrongs brought to its attention and that if such willful violations are found, that officials/officers be required to immediately resign, be removed from office/position, etc.

With no disrespect to the Court, Petitioner believes a reasonable mind will be able to conclude that this Court's failure to address the issues raised in the Writ of Prohibition was done for purposes of confusion and its efforts to evade acknowledging the Kenton County District Court's and Kenton County's Circuit Court's lack of jurisdiction over the Petitioner and the subject matter of the lawsuit filed by Real Parties of Interest in the Kenton County District Court. Moreover, its attempt to deprive the Petitioner the relief she seeks as a direct and proximate result of the **separate** civil lawsuit she has filed in the Kenton County Circuit Court against Real Parties of Interest. Furthermore, this Court's efforts in attempting to render special favors to the Respondent, Real Parties of Interests and their counsel.

The issues raised herein as well as in the Writ of Prohibition and Petitioner's lower court(s) pleadings are ***well-settled*** as a matter of law. In support thereof the Petitioner states:

> **CR 52.01 WHEN REQUIRED; EFFECT**
>
> In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts *specifically and state separately* its conclusions of law thereon and render an appropriate judgment; . . . Requests for findings are not necessary for purposes of review except as provided in Rule 52.04. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a commissioner, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. . .

CR 52.03 SUFFICIENCY OF EVIDENCE TO SUPPORT FINDINGS

When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial court an objection to such findings or has made a motion to amend them or a motion for judgment or a motion for a new trial.

CR 52.04 FAILURE TO MAKE FINDING ON ESSENTIAL ISSUE OF FACT; NECESSITY FOR REQUEST

A final judgment shall not be reversed or remanded because of the failure of the trial court to make a finding of fact on an issue essential to the judgment unless such failure is brought to the attention of the trial court by a written request for a finding on that issue or by a motion pursuant to Rule 52.02.

CR 76.38 EFFECTIVE DATE AND RECONSIDERATION OF ORDERS

(1) Effective date.

Unless otherwise directed, all orders of an appellate court, including those in original proceedings under Rule 76.36, are effective upon entry and filing with the clerk. A decision or ruling styled an "Opinion and Order" is an order.

(2) Reconsideration.

Unless otherwise provided by these Rules or ordered by the court, a party adversely affected by a decision rendered by order may within 10 days after the date of its entry move the court to reconsider it. On ex parte motion the court may suspend the effectiveness of such order pending disposition of the motion to reconsider. The timely filing of a motion to reconsider an order granting or denying a motion to dismiss shall suspend the running of time to the same extent as provided by Rule 76.34(6)(b) with respect to the filing of a motion to dismiss.

Kentucky Law:

Lakes v. Goodloe, 242 S.W. 632 (**Ky.**,1922) - The General Assembly is not dependent upon the provisions of the Constitution to give it power to legislate upon a subject, but its powers of

legislation extend into every zone wherein it is not prohibited by the Constitution.

U.S. v. Reese, 92 U.S. 214 (U.S.**Ky.**,1875) - Congress, within its legitimate sphere, is supreme and beyond the control of the court, but if it steps outside of its constitutional limitations and attempts that which is beyond its reach, courts are authorized to and when called upon in due course of legal proceedings must, annul its encroachments upon the reserved power of the state and the people.

Doe ex dem. Poor v. Considine, 73 U.S. 458 (U.S.Ohio,1867) - The function of the Supreme Court is to execute the law and not to make it.

Manning v. Sims, 213 S.W.2d 577 (**Ky.**,1948) -The sharp separation of powers of government must be preserved carefully by the courts, and judicial powers must not be permitted to encroach upon legislative powers. Const. § 27.

Chapman v. Chapman, 498 S.W.2d 134 (**Ky.**,1973) - It is for court to interpret law, not to enact legislation.

Com. ex rel. Cowan v. Telcom Directories, Inc., 806 S.W.2d 638 (**Ky.**,1991) - Supreme Court's role is not to legislate; however, Court has clear responsibility to apply and enforce state laws.

Conrad v. Lexington-Fayette Urban County Government, 659 S.W.2d 190 (**Ky.**,1983) - Legislative action of any governing body is subject to very limited judicial review.

1. This instant MFFFMRONTR is timely filed in that on May 7, 2008, this Court entered its Order in the above-styled action denying Writ of Prohibition ("WOP"). (See **EXHIBT "A"** attached hereto and incorporated by reference). Statutes/Laws require that party file the applicable objection/responsive pleading within ten (10) days of entry of the Order being challenged.

2. The Petitioner through this instant MFFFMRONTR seeks this Court's findings and facts and the evidence it relies upon to rebut that presented by the Petitioner. The record is presently silent as to this Court's findings and facts and evidence as to the issues raised in the Petitioner's Writ of Prohibition.

3. The Petitioner through this instant MFFFMRONTR seeks this Court's vacating of its May 7, 2008 Order in that it is clearly erroneous, arbitrary/capricious, cannot be sustained, submitted for the purposes of depriving the Petitioner equal protection of the laws and due process of laws; as well as infringes upon the Petitioner's Constitutional Rights, Civil Rights and other governing statutes/laws.

4. The record evidence clearly supports that this Court's May 7, 2008 Order clearly goes against past decisions rendered by it – as evidenced in this Court's decisions which where attached to Petitioner's Writ of Prohibition. Further supporting the prejudicial and discriminatory actions of this Court.

5. While the law clearly prohibits the retaliation and discriminatory treatment the Petitioner has been subjected to, a reasonable mind may conclude given the facts, evidence and legal conclusions in the records of this Court and lower court(s) that such prejudices and unlawful/illegal and unethical practices by this Court and the lower court(s) are a *blatant defiance* and *detest* of the Petitioner's Constitutional Rights, Civil Rights, the Rules of Civil Procedure and other statutes and/or laws which govern said matters. Moreover, racially motivated and such prejudice is apparent through the arbitrary/capricious actions of this court. Petitioner is certain that with an Investigation and Hearing into this Court's repeated attempts to infringe upon the Petitioner's Constitutional and Civil Rights, etc. that this Court will have no explanation, evidence or legal conclusions to rebut that presented by her. Therefore, leaving a reasonable mind to conclude that the acts of this Court was ill-motivated and deliberately done to deprive the Petitioner equal protection of the laws and due process of laws.

6. Given the history of America/United States, it is a known fact that White-Americans did not want African-Americans to learn how to read or to become educated. Thus, keeping African-Americans ignorant would allow for such wrongs as that complained of in the Petitioner's Writ of Prohibition and lower court(s) proceedings, in that not knowing what their Constitutional and Civil Rights are, they would be taken advantage of. Moreover, whites would use such ignorance to deprive African-Americans of certain liberties, etc. secured/guaranteed under the Constitution (Kentucky and United States).

7. The record evidence will support that the Petitioner provided facts, evidence and legal conclusions to sustain her defense that the Kenton County District Court as a matter of statutes/laws never obtained jurisdiction over her or the subject matter. Therefore, any such appeal that this Court asserts the Petitioner should have sought is futile. Thus, a reasonable mind may conclude that the May 7, 2008 Order is arbitrary and/or capricious and was entered to deprive the Petitioner rights guaranteed under the Constitution, Civil Rights laws and other governing states/laws on the issues raised.

8. The Petitioner certifies this instant MFFFMRONTR is submitted in *good faith* and is not provided out of disrespect for this Court, for purposes of delay, hindering proceedings, obstructing the administration of justice, or to increase the costs of litigation. Moreover, this pleading is supported by the investigation/research, facts and evidence presented in the Petitioner's pleadings filed in this instant lawsuit and her pleadings filed in the lower court(s) on this matter.

9. This instant pleading is being filed to preserve the rights of the Petitioner secured to her under the United States Constitution, Civil Rights Act, Rules of Civil Procedure and other laws/statutes governing said matters to assure she receives ***equal*** protection of the laws; ***due process*** of laws and afforded justice under the laws governing said matters.

10. The record of this Court will sustain that there is enough evidence in the record to sustain the Petitioner's timely filings/pleadings and notification to this Court of concerns of illegal/unlawful and unethical handling of this lawsuit. Moreover, concerns that rulings by this Court and lower court(s) are *racially* and *discriminatorily* motivated. Furthermore, rulings of this Court clearly goes to strip and/or deprive the Petitioner of her rights secured under the Kentucky Constitution, United States Constitution, Civil Rights Act (state and federal), Landlord and Tenant Act and other such laws/statutes governing said matters.

11. Petitioner believes the Legislatures'/Congress' (Kentucky and United States) intervention may be necessary. Therefore, she will be filing the required pleadings with the Legislature/Congress (Kentucky and United States) requesting Investigations and Hearings on this matter. Through said Investigations and Hearings, the Petitioner believes that the Legislature/Congress may find it necessary to create and pass additional laws to correct the wrongs, prejudices and discriminatory treatment as that rendered the Petitioner. Moreover, the Petitioner will seek the creation of laws and the passing thereof (if there are not laws presently in effect), to have Judges/Judges/Magistrates removed from the bench immediately when such prejudices and/or discriminatory handling of citizens claims are so blatant/direct and clear as that of the Petitioner, especially when they involve criminal actions clearly and *inevitably* known to Justices/Judges/ Magistrates; however, such officers of the courts refuse to uphold the laws and deter such legal civil and criminal wrongs brought to the courts' attention and resulting in Constitutional, Civil Rights, etc. violations. Furthermore, it may be necessary to create laws to amend the "immunity" laws that Justices/Judges use to shield them with knowledge of the civil/criminal acts being rendered. It appears with Justices/Judges with knowledge of certain immunity, has deliberately acted in a manner they know to be in violation Petitioner's rights as well as in violation of Codes under which they are governed.

12. Petitioner request that this Court provides its findings and facts (stating separately and specifically) regarding the issues raised in her WOP pursuant to CR 52. Petitioner also requires this Court produce and or provide all evidence that it relied upon to sustain its Ordered entered in this matter on May 7, 2008, and to rebut that presented by Petitioner through this action and the lower court(s) action. Said Order does not present any facts or findings and neither does it provide any evidence upon which it rest to sustain it.

13. Petitioner believes a reasonable mind given the facts, evidence and legal conclusions presented in her pleadings filed with this Court and the lower courts may conclude that the acts of the Justices/Judges is arbitrary and/or capricious and was done with malicious intent to needlessly increase the cost of litigation and efforts have been taken to aid Respondent, Real Parties in Interest, and their counsel in this matter. Moreover, to cover-up illegal/unlawful acts.

14. Petitioner believes that an Investigation and Hearings held in regards to this matter by the Legislature will reveal that this Court and lower court(s) relied upon matters outside this lawsuit in which such acts are unlawful/illegal and unethical; however, has been done to prejudice and discriminate against the Petitioner in that she has relied upon the judicial system to render justice for the wrongs complained of and in which it is refusing to uphold the laws/statutes governing said matters. Petitioner

believes an Investigation and Hearings held in this matter will put matters out on the table and out for public review and exposure of such bias/prejudicial handling of cases and Justices/Judges willful and deliberate acts to discriminate against parties because of their race and knowledge of the participation and protected activities. Furthermore, it would allow Legislature/Congress to expose the under-the-table handshaking between the Justices/Judges and opposing parties and/or their counsel in this matter. By holding an Investigation and Hearings, information this Court and others are trying to keep out of the Petitioner's hands as well as the public will be revealed and their knowledge that their acts are unlawful/illegal and unethical. How they have used their positions and relationships in a bias and prejudicial manner to deprive the Petitioner rights secured and/or guaranteed under the Constitution, Civil Rights Act, Rules of Civil Procedure and/or other governing laws.

15. Petitioner believes that the record facts, evidence and legal conclusions will support that she used this Court's January 3, 2008 Order in Case No. 2007-CA-001589-MR as a guide to aid her in the drafting of her WOP in this instant action; moreovere, that this Court's recent far departure from said order, in its May 7, 2008, clearly supports its ruling arbitrary and/or capricious and deliberately done to deprive the Petitioner equal protection of the laws and due process of laws - rights secured under the Constitution, Civil Rights Act and other governing laws/statutes.

16. Petitioner believes that there is sufficient facts, evidence and legal conclusion provided in this instant action and that in the lower court(s) from which this action arises to sustain the source of legal authority is statutory and encompassed upon the laws/statutes enacted by the Legislature; therefore Legislature/Congress may be required to intervene, initiate an Investigation and hold Hearings in compliance with its power/authority secured under the Constitution. Thus, resulting in the Legislature/Congress upon such Investigation and Hearings to issue the applicable directives to correct the injustices, prejudices and discriminatory treatment the Justices/Judges and Government Officials/Employees have rendered the Petitioner – which will be clearly evidenced in the records of the Courts and Agency(s).

> *Berry v. American Express Pub., Corp.,* 381 F.Supp.2d 1118 (2005) - Where source of legal authority is statutory and not constitutional, Congress retains ability to create and direct law, so long as it is consistent with constitutional principles, and it is particularly important for court to follow that directive.

> **Kentucky Law:**
> *Sibert v. Garrett,* 246 S.W. 455 (**Ky.**,1922) - A state Legislature has all powers not withheld by the Constitution of the state, but this means only legislative powers; that is, they may pass any acts that are not expressly or impliedly inhibited by either the state or federal Constitution, but may not perform any executive or judicial act unless impliedly directed or permitted.

Banks v. Commonwealth, 141 S.W. 380 (**Ky.,**1911) - A state constitution is not a grant but a limitation on legislative power, so that the Legislature may enact any law not expressly or inferentially prohibited by the Constitution of the state or nation.

Dalton v. State Property and Buildings Commission, 304 S.W.2d 342 (**Ky.,**1957) - State constitution is not a grant of power but is a limitation on legislative power, and such department of government possesses and may exercise within constitutional limits all legislative powers as it sees fit and may enact any law not expressly or impliedly prohibited by the state or federal constitutions.

Taylor v. Com. ex rel. Dummit, 202 S.W.2d 992 (**Ky.,**1947) - The Legislature may enact any statute it deems necessary for the public interest, unless prohibited by constitutional provisions and in exercise of that authority may frame its enactments and express its intention and purpose as it sees proper.

Lawrence E. Tierney Coal Co. v. Smith's Guardian, 203 S.W. 731 (**Ky.,**1918) - A state constitution is not a grant but a limitation on legislative power, so that the Legislature may enact any law not expressly or inferentially prohibited by the Constitution of the state or nation.

Rhea v. Newman, 156 S.W. 154 (**Ky.,**1913) - A state constitution is not a grant but a limitation on legislative power, so that the Legislature may enact any law not expressly or inferentially prohibited by the Constitution of the state or nation.

McCreary v. Field, 147 S.W. 901 (**Ky.,**1912) - A state constitution is not a grant but a limitation on legislative power, so that the Legislature may enact any law not expressly or inferentially prohibited by the Constitution of the state or nation.

17. Once the Petitioner files the required Complaint and/or Pleading requesting the Legislature's/Congress' intervention and initiation of Investigation and Hearings, the powers of the Kentucky Court of Appeals and/or Kentucky Courts will be greatly diminished. Such intervention by the Legislature/Congress will be made in good faith.

Overlie v. Owatonna Independent School Dist. No. 761, 341 F.Supp.2d 1081 (2004) - Once Congress addresses a subject, the lawmaking authority of federal courts is greatly diminished.

Bruner v. U.S., 340 F.Supp.2d 1204 (2004) - Congress is invested with a wide discretion, and its action, unless purely arbitrary, must be accepted and given full effect by the courts

18. Petitioner believes that the facts, evidence and legal conclusions presented in this instant lawsuit as well as that which will become available during the Investigation and Hearings by the Legislature/Congress will support the public interest and the creation, passing and enforcement of the laws to deter such unlawful/illegal and unethical practices of Justices/Judges/Magistrate and Government Officials/Employees will be necessary. Moreover, stricter laws requiring the removal, resignation, etc. of Justices/Judges and Government Officials/Employees.

Page v. Shelby, 995 F.Supp. 23 (1998) - Vindication of public interest in governmental observance of Constitution and law is function of Congress and President, not judiciary.

Kentucky Law:

R.C. Tway Coal Co. v. Glenn, 12 F.Supp. 570 (**W.D.Ky.**,1935) - In enacting statute, Congress should first determine if act proposed is in interest of public welfare, then whether states acting independently could accomplish the result, and if not, should federal government take action, and finally should search Constitution for authority to carry into statutory form demand of people for governmental action.

Hart Coal Corp. v. Sparks, 7 F.Supp. 16 (**W.D.Ky.**,1934) - No emergency can empower Congress to legislate on matters not expressly or impliedly granted by Constitution. U.S.C.A.Const.Amends. 9, 10.

Com. v. Wells, 244 S.W. 675 (**Ky.**,1922) - The state, independent of any constitutional authority on the subject, has the inherent power to legislate on any subject affecting the morals of its citizens.

19. Petitioner intends to file the applicable pleadings with the Legislature/Congress to enjoin legislative action in that this Court and the lower courts' actions are unconstitutional and violates the statutes/laws or regulations that has been enacted. Moreover, Petitioner believes upon the conclusion of an Investigation and Hearings she will seek, that additional laws/statutes may be necessary to prohibit and deter such unlawful practices by Justices/Judge and Government Officials/Employees who feel that they are above the laws and may proceed with reckless disregard of citizens rights secured/guaranteed under the Constitution, Civil Rights Act, Rules of Civil Procedure and/or other statutes/laws in which they are governed and/or are to uphold/enforce.

Henrietta D. v. Giuliani, 21 A.D.D. 329 (1996) - District court may enjoin executive or legislative action if that action is unconstitutional or violates statutes or regulations.

Moser v. F.C.C., 46 F.3d 970 (1995) - Court's deference to Congress' factual findings does not foreclose court's independent judgment of facts bearing on issue of constitutional law.

Kentucky Law:

Rivers v. Roadway Exp., Inc., 114 S.Ct. 1510 (U.S.Ohio,1994) - Congress has the power to amend the statute it believes Supreme Court has misconstrued and may, within broad constitutional bounds, make that change retroactive and thereby undo perceived undesirable past consequences of misinterpretation of its work product, but such change must be implemented through legislation to have force of law.

Holsclaw v. Stephens, 507 S.W.2d 462 (**Ky.**,1973) - State Constitution is limitation upon exercise of power rather than grant of any specific power to legislature, and legislature may enact any law which is not expressly or impliedly prohibited by the Constitution of the United States or the State Constitution. Const. §§ 27, 29.

Duke v. Boyd County, 7 S.W.2d 839 (**Ky.**,1928) - Only limits on Legislature, outside constitutional restrictions, in enacting laws are its wisdom, judgment, and patriotism.

> *Com. v. Wells,* 244 S.W. 675 (**Ky.**,1922) - The inherent power of the state to legislate on subjects affecting the morals of its citizens is not surrendered or abridged by the mere adoption of a constitutional provision relating to such subjects, unless the terms of the provision plainly express or imply a limitation or restriction on the power.

20. Because it is the Legislature/Congress who has enacted the statutes/laws in which this Court is attempting to deprive the Petitioner equal protection of the laws and due process of laws, the Legislature's/Congress' intervention appears to be inevitable.

> *Northwest Airlines, Inc. v. Transport Workers Union of America, AFL-CIO,* 101 S.Ct. 1571 (1981) - Federal lawmaking power is vested in the legislative, not the judicial, branch of government and, therefore the federal common law is subject to the paramount authority of Congress.

21. Petitioner believes that the record evidence of this Court and the lower courts' in which this original action has originated will support that a great deal of time has been wasted and the Petitioner has had to sustain needless expenses to sustain this action because of this Court's and the lower courts' unlawful/illegal and unethical practices in subjecting her to prejudicial and discriminatory treatment as a direct and proximate result of its knowledge of lawsuit(s) outside this instant action which has no

bearing on this instant lawsuit. Moreover, the actions taken by the Justices/Judge, Government Officials and opposing counsel and/or counsel representing opposing parties working and/or conspiring to deprive the Petitioner Constitutional rights, Civil Rights and other legal rights based upon said knowledge.

> *Doe v. McMillan,* 93 S.Ct. 2018 (1973) - A court has no authority to oversee judgment of a congressional committee in regard to what matter to include in reports prepared within the legislative sphere or to impose liability on its members if the court disagrees with their legislative judgment. U.S.C.A.Const. art. 1, § 6, cl. 1.

I. INVESTIGATIONS:

> *McGrain v. Daugherty,* 47 S.Ct. 319 (U.S.**Ohio**,1927) - Power of inquiry is essential and appropriate auxiliary to legislative function. . . . Congress may inquire into private affairs and compel disclosures only in so far as to make express powers effective.

> *Watkins v. U.S.,* 77 S.Ct. 1173 (1957) - Power of Congress to conduct investigations is inherent in the legislative process, and is broad. . . . . Congress, through its committees, may obtain any information it needs for proper fulfillment of its role, and is free to determine the kinds of data that should be collected; it is only investigations conducted by use of compulsory process that give rise to the need to protect rights of individuals against illegal encroachment. 2 U.S.C.A. § 192.

> **Kentucky Law:**
> *Clark v. Board of Ed. of Shelbyville, Ky.,* 350 F.Supp. 149 (**E.D.Ky.**,1972) - Courts may not invade the domain of the legislature; where a plaintiff is asking for legislative relief or relief which would encroach on the legislative process the courts are without power to act.

> *Com. ex rel. Howard v. Imperial Oil Co.,* 202 S.W.2d 413 (**Ky.**,1947) - Courts only interpret and apply the laws, but cannot make or waive them.

> *R.C. Tway Coal Co. v. Glenn,* 12 F.Supp. 570 (**W.D.Ky.**,1935) - Constitution merely enumerates powers and leaves defining to Congress, and, consequently, if a definition of Congress is without basis in fact, courts may disregard congressional definition.

> *Adams Express Co. v. Young,* 211 S.W. 407 (**Ky.**,1919) - In view of Const. §§ 27, 28, delegating to the legislative department the power to legislate, it is the duty of the court to interpret and not make laws.

22. Petitioner believes that the intervention of the Legislature/Congress is inevitable in that Justices/Judges, Government Officials, opposing parties and their

counsel are relying upon unlawful/illegal and unethical practices to deprive the Petitioner equal protection of the laws and due process of laws. Moreover, relying upon special favors and relationships and their knowledge of Petitioner's participation in protected activities to prejudice it and discriminate against her in the rendering of justice in this action. Petitioner believes additional laws may be necessary to deter and punish the civil/criminal wrongs complained of and that may be found a result of an Investigation and Hearings held.

> *Ashland Oil, Inc. v. F. T. C.,* 409 F.Supp. 297 (1976) - Although the investigatory power of Congress is penetrating and far reaching in scope, it is not unlimited. U.S.C.A.Const. art. 1, § 1 et seq.
>
> *Nixon v. Administrator of General Services,* 408 F.Supp. 321 (1976) - Congressional power to investigate, although limited to areas in which Congress possesses legislative authority, is both broad and integral to the legislative process.
>
> *McGrain v. Daugherty,* 47 S.Ct. 319 (U.S.Ohio,1927) - Congress may inquire into **private** affairs and compel disclosures only in so far as to make express powers effective

23. Petitioner will seek the intervention of the Legislature/Congress in that she believes it will find that Justices/Judges, Government Officials as well as opposing parties and their counsel have knowingly committed civil and criminal wrongs against the Petitioner as a direct and proximate result of its knowledge of Petitioner's participation in protected activities – matters outside this lawsuit and having no bearing on same.

> *American Federation of Government Employees,* AFL-CIO v. U.S., 330 F.3d 513 (2003) - Incident to its lawmaking authority, Congress has the authority to decide whether to conduct investigations and hold hearings to gather information.

24. Petitioner believes that upon Investigation and Hearing on the Complaint she intends to file with the Legislature/Congress, that additional statutes/laws may need to be enacted, passed and enforced to protect the rights of citizens – the public. Moreover, that an Investigation and Hearings may yield further evidence that citizens which have been subjected to similar unlawful/illegal and unethical treatment at the hands of Justices/Judges, Government Officials as well as opposing parties and their counsel, lost hope and faith in the judicial process because of such corrupt and unlawful/illegal and unethical practices, that, unlike the Petitioner, they resorted to criminal acts in efforts of obtaining justice for themselves. Thus, warranting the intervention of the Legislature/Congress to enact/pass more stringent laws/statutes which will rid and/or punish for such unlawful/illegal practices and restore the integrity the Court and/or agency and the confidence of the citizens in the judicial and/or legal process – pursuit of justice.

McDonnell Douglas Corp. v. U.S., 754 F.2d 365 (1985) - Congress has implied as well as express powers incident to its duty to legislate wisely, including power to investigate.

U.S. v. McDonnell Douglas Corp., 751 F.2d 220 (1984) - Power to investigate is necessarily incident to Congress' power to legislate.

25. Petitioner believes an Investigation and Hearings into this matter may yield additional criminal and civil wrongs and therefore, she will seek to have perpetrators prosecuted to the full extent of the laws and that the Justices/Judges and/or Government Officials removed from their office in the interest of justice and the protection of citizens rights and the restoration of the integrity of the judiciary. Moreover, that lawyers/attorneys found guilty of such civil/criminal wrongs (which was voluntarily and knowingly committed) be subject to disbarment for such acts and breach of the Code of Professional Conduct, etc.

Watkins v. U.S., 77 S.Ct. 1173 (1957) - Power of Congress to conduct investigations is inherent in the legislative process, and is broad.

Watkins v. U.S., 77 S.Ct. 1173 (1957) - Congressional power of investigation is not unlimited and there is no general authority to expose the private affairs of individuals without justification in terms of the functions of Congress.

Braden v. U.S., 272 F.2d 653 (1959) - Investigations can be made by Congress only as to matters which are proper subjects for legislation by it, and there is no congressional power to expose for the sake of exposure.

Marcello v. U.S., 196 F.2d 437 (1952) - A congressional inquiry may be as broad as the legislative purpose requires.

26. Petitioner believes the Legislature's/Congress' intervention may be necessary in that said body will not knowingly permit the violations of constitutional provisions as that rendered the Petitioner in her pursuit of justice.

Raney v. Stovall, 361 S.W.2d 518 (Ky.,1962) - That legislature may make wrong decision is no reason for invasion by judiciary of exclusive domain of legislature; ?and court must assume that Senate will not knowingly permit violations of constitutional provisions.

Avey Drilling Mach. Co. v. Lukowsky, 261 S.W.2d 432 (Ky.,1953) - Court has no constitutional authority to sit in judgment on proposed legislation, when legislative body is proceeding within scope of its governmental or corporate

> power, as no justiciable question arises until after enactment or passage of such ordinance or resolution.
>
> *Lynn v. Bullock,* 225 S.W. 733 (Ky.,1920) - The courts cannot control or restrain the freedom of the Legislature, except when it plainly transgresses the bounds of its authority as laid down in the Constitution, and will presume that in enactment of laws the Legislature has kept within the limit of the Constitution, unless the conflict between the Constitution and statute is irreconcilable, in which event it is the court's duty to uphold the Constitution.

27. While it appears that this Court relied upon *Hoskins v. Maricle,* 150 S.W.3d 1 (Ky.,2004), the Petitioner believes an Investigation and Hearings into the Complaint she may be required to file with the Legislature/Congress will support that a reasonable mind may conclude the Kentucky Court of Appeal's failure and/or refusal to address the issues raised in the Petitioner's original action and the lower court(s) actions in which this matter has been filed, clearly evidences this Court's inability to rebut the facts, evidence and legal conclusions presented by the Petitioner to support her action. Moreover, that this Court has acted with willful, deliberate and malicious intent to deprive the Petitioner equal protection of the laws and due process of laws – subjecting the Petitioner to clear and blatant prejudicial and discriminatory treatment in the handling of this matter because of its knowledge of Petitioner's participation in protected activity(s). Furthermore, this Court's **far** departure *from **its** own rulings* to deprive the Petitioner justice. Upon review of *Hoskins*, a reasonable mind may conclude that the Kentucky Court of Appeals knew and/or should have known the following:

> *Hoskins v. Maricle,* 150 S.W.3d 1 (Ky.,2004) - (1) *existence of **adequate remedy** by appeal* **does not** *preclude issuance of writ to prohibit trial court from acting outside its jurisdiction,* abrogating *Lewis LP Gas, Inc. v. Lambert,* 113 S.W.3d 171, Ky. *Labor Cabinet v. Graham,* 43 S.W.3d 247, *Commonwealth v. Ryan,* 5 S.W.3d 113, *Potter v. Eli Lilly & Co.,* 926 S.W.2d 449, *Fischer v. State Bd. of Elections,* 847 S.W.2d 718, *Shumaker v. Paxton,* 613 S.W.2d 130, *Tipton v. Commonwealth,* 770 S.W.2d 239, *Southeastern United Medigroup, Inc. v. Hughes,* 952 S.W.2d 195;
>
> (n. 2) - A writ of prohibition may be granted upon a showing that (1) the **lower court** is ***proceeding*** **or is about to proceed** ***outside*** **of its jurisdiction** and there is no remedy through an application to an intermediate court; or (2) that **the lower court** ***is acting*** or is about to act **erroneously**, although within its jurisdiction, and there exists no adequate remedy by appeal or otherwise and great injustice and irreparable injury will result if the petition is not granted; abrogating *Lewis LP Gas, Inc. v. Lambert,* 113 S.W.3d 171, Ky. *Labor Cabinet v. Graham,* 43

S.W.3d 247, *Commonwealth v. Ryan,* 5 S.W.3d 113, *Potter v. Eli Lilly & Co.,* 926 S.W.2d 449, *Fischer v. State Bd. of Elections,* 847 S.W.2d 718, *Shumaker v. Paxton,* 613 S.W.2d 130, *Tipton v. Commonwealth,* 770 S.W.2d 239, *Southeastern United Medigroup, Inc. v. Hughes,* 952 S.W.2d 195. Const. §§ 110(2)(a), 111(2).

(n. 13) - Finding of "*great injustice and irreparable injury*" to petitioners **was not** *an absolute prerequisite* to considering merits of their claim seeking writ prohibiting judge of circuit court from ordering retrial . . . ; if judge erred . . . . subjecting petitioners to another trial . . . and a lengthy appeal, *such would constitute* ***a miscarriage of justice*** *and would* ***disrupt*** *the orderly administration of justice*. Const. §§ 110(2)(a), 111(2).

In *Hargis v. Parker,* Ky., 85 S.W. 704 (1905), a case decided only fourteen years after the adoption of **Section 110 of the 1891 Constitution**, our predecessor court wrote:

If it be true that the . . . court **is proceeding without jurisdiction**, it is not substantial justice that it should be allowed . . . as it might do at its discretion, *subject the parties* ***to enormous expense*** *in defending the case*, even if it went no further than a trial of the question of jurisdiction, and say to them, "Your remedy is solely by appeal if you have been wronged." We think [Section 110] of the Constitution, though it be deemed only declaratory of the common law on the subject, confers the power and jurisdiction on this court to intervene by the writ of prohibition to stay the inferior courts of the state from proceeding out of their jurisdiction. **It may issue whether or not there is an appeal**.

Id. at 706. Hargis was cited by Chamblee, supra, as authority for the proposition that the existence of a remedy by way of appeal **does not** *control when the inferior court is* *11 *acting* ***outside*** *its jurisdiction*. Id., 249 S.W.2d at 777.

We have consistently issued writs to prohibit . . . proceedings when the lower court was acting outside of its jurisdiction. See *Peterson v. Shake,* 120 S.W.3d at 710 (circuit court without jurisdiction to try misdemeanor offense as a felony); *Spivey v. Jackson,* Ky., 602 S.W.2d 158 (1980) . . . *Pinkleton v. Lueke,* 265 Ky. 84, 95 S.W.2d 1103, 1106 (1936) (magistrate without jurisdiction to hold examining trial); . . . Appellants would have a right to appeal and to raise the same jurisdictional issue they now raise by way of original action; we conclude, however, that the existence of that right is an inadequate remedy in this circumstance. To paraphrase Commissioner Clay:

If [Judge Maricle] lacks jurisdiction to [reject these plea agreements], it would be a most inept ruling to deny the writ, require a trial on the merits, and then on an appeal be forced to reverse the case on the very question which is now before us.

Chamblee, 249 S.W.2d at 777. We turn now to the claim that Judge Maricle acted outside of his jurisdiction.

****FN12 - [12] The claim in this case is more akin to the latter class of cases than to the former; for Appellants essentially claim immunity from further prosecution. . . . Applying the logic of *Hargis v. Parker,* supra, that it **is not enough under this circumstance *to say*** to Appellants, "*Your remedy is solely by appeal if you have been wronged*," 85 S.W. at 706, we conclude that the right of appeal is inadequate in this circumstance.

****FN13 - [13] We turn now to the requirement of "great injustice and irreparable injury." In *Litteral v. Woods,* 223 Ky. 582, 4 S.W.2d 395 (1928), our predecessor court defined great injustice and irreparable injury as "incalculable damage to the applicant ... either to the liberty of his person, or to his property rights, or other far-reaching and conjectural consequences." Id., 4 S.W.2d at 396-97 (emphasis added). *Litteral* cited as an example *Natural Gas Products Co. v. Thurman,* 205 Ky. 100, 265 S.W. 475 (1924), where the failure to issue the writ would have required the closing of a newly constructed and fully operational manufacturing plant. Distinguishing Thurman, Litteral held that no "great and irreparable injury" would result from the petitioner's temporary loss of a judgment to which he believed himself entitled in the event of a correct ruling. Id., 4 S.W.2d at 398; see also Farmers Nat'l Bank of Danville v. Speckman, 312 Ky. 106, 226 S.W.2d 315, 317 (1949) (delay and expense of appeal is not irreparable injury); Osborn v. Wolfford, 239 Ky. 470, 39 S.W.2d 672, 673 (1931) (" '[G]reat and irreparable injury' ... [is] not such an injury as is usually suffered and sustained by a losing litigant upon a trial of his case in a court having *20 jurisdiction thereof, i.e., a mere failure to succeed in that litigation, followed by the loss of that which success might have brought him ... but great and ruinous loss ... for which there was no remedy.").

Litteral, Farmers National Bank, and Osborn were civil cases, and Litteral specifically identified **damage to a person's liberty** as "great injustice and irreparable injury." Id., 4 S.W.2d at 397. . .

> Thus we find that in certain special cases this Court will entertain a petition for prohibition in the absence of a showing of specific great and irreparable injury to the petitioner, provided a substantial miscarriage of justice *will result if the lower court is proceeding erroneously, and correction of the error is necessary and appropriate in the interest of orderly judicial administration.* It may be observed that in such a situation the court is recognizing that if it fails to act the administration of justice generally will suffer the great and irreparable injury.
>
> Id. at 801; see also *Roman Catholic Diocese of Lexington v. Noble,* Ky., 92 S.W.3d 724, 729 (2002). We conclude that if Judge Maricle erred . . ., which would unnecessarily subject Appellants to another trial . . ., such would constitute a miscarriage of justice and would disrupt the orderly administration of justice. . . .

Nevertheless, the Kentucky Court of Appeals elected to take a ***far*** *departure* from the laws an its past decisions in an effort to aid the Respondent, Real Parties of Interest and their counsel in depriving the Petitioner rights secured under the Constitution, Civil Rights Act, Landlord Tenant Act, Rules of Civil Procedure and other statutes/laws as a direct and proximate result of its knowledge of the Petitioner's engagement in protected activity(s) having no bearing on this instant action.

28. It is clearly apparent from the record facts, evidence and legal conclusions presented in this matter this Court is attempting to subject the Petitioner to irreparable harm and blatant miscarriage of justice, etc. Therefore, if this Court does not vacate the May 7, 2008 Order entered in this matter, the Petitioner will move for the Legislature's/Congress' intervention.

> *Hodge v. Coleman,* 244 S.W.3d 102 (Ky.,2008) - (n. 7) - A court may grant a writ of mandamus without a showing of irreparable harm, provided a substantial miscarriage of justice will result if the lower court is proceeding erroneously, and correction of the error is necessary and appropriate in the interest of orderly judicial administration; it may be observed that in such a situation the court is recognizing that if it fails to act the administration of justice generally will suffer the great and irreparable injury.

29. While the Petitioner relied upon this Court's ruling in 2007-CA-001589-MR and other legal resources (Westlaw, Rules of Civil Procedure, etc.) to aid her in drafting the WOP, a reasonable mind may conclude that said order was a "Fork-Tongue" ruling. Merely for show and fashion, having no intentions of standing by ruling, uphold the laws and was lying. Such statement is not made out of disrespect to this Court, its May 7, 2008 Order entered in this instant matter sustains such fabrication. The May 7, 2008 Order is cannot be sustained by any facts, evidence or legal conclusions and was entered to deprive the Petitioner equal protection of the laws and due process of laws.

Deprivation of rights secured under the Constitution. Upon review of the record the following may be found.

CR 76.26 Requirements

CR 76.36 ORIGINAL PROCEEDINGS IN APPELLATE COURT

(1) Petition for relief.

Original proceedings in an appellate court may be prosecuted only against a judge or agency whose decisions may be reviewed as a matter of right by that appellate court. All other actions must be prosecuted in accordance with applicable law. Original proceedings in an appellate court may be prosecuted upon the payment of the filing fee required by CR 76.42(2)(a) and the filing of a petition setting forth:

(a) The name of each respondent against whom relief is sought;

(b) The style and file number of the underlying action before the respondent(s);

(c) The facts upon which petitioner claims entitlement to relief;

(d) The relief sought;

(e) A memorandum of authorities in support of the petition.

A copy of the petition shall be served on each respondent and each real

Excerpts of Content of WOP:

Time of Application

Supervisory Control

Necessity of Objection in Inferior Court

Disqualification of Judge for Interest, Bias, or Prejudice

Immunity Not Applicable

- § 1985 – Action for Neglect to Prevent

Defects in Mode or Manner of Service of Process/Adequacy to Test Defective Service of Process

Jurisdictional Issues:

- Exclusive Jurisdiction Vested in Another Court
- Want of Jurisdiction
- Exceeding Jurisdiction
- Usurpation of Jurisdiction
- Adequacy to Test Jurisdictional Defects

Miscarriage of Justice/Irreparable Injury and/or Harm

Conclusion

Prayer and Relief Sought

Memorandum Brief

party in interest as defined in this Rule, Section (8), and shall bear proof of service as required by Rule 5.03. Immediately upon the filing of the petition, the clerk shall mail to each respondent and real party in interest notice of the date the petition was filed.

Clearly supporting that Petitioner's WOP met the pleading requirements for such matters. Moreover, the Petitioner produced as Exhibits, decisions from this Court to sustain a ruling in her favor.

30. This Court in a ruling in Case No. 2007-CA-001589-MR, stated:

> "While appellant appears to believe that this Court's decision indicates bias towards her, our decision is firmly rooted in the law and is not the result of any kind of bias."

See Order at Exhibit "I" at p. 3, of Petitioner's Writ of Prohibition.

> "A separate document fully complying with all requirements of CR 76.36 would have been necessary for the docketing of an original action."

See Order at Exhibit "I" at p. 3 of Petitioner's Writ of Prohibition.

Based upon such a ruling by this Court, the Petitioner used said order as a guide in drafting her WOP pleading. Nevertheless, this Court has failed to abide by any ordered entered by it and it May 7,2008 Order entered in this action, is not in compliance with statutes/laws governing said matters and neither can it be sustained. Moreover, it can be defeated by the facts, evidence and legal conclusions presented in this instant pleading, the WOP and Petitioner's lower court pleadings.

31. Petitioner believes a reasonable mind may conclude that the acts of this Court is further bias/prejudicial and in keeping with concerns "white" America's abuse of the judicial process to render special favors for white parties in litigation involving African-Americans and/or people of color. Wherein the Courts of those in the position to deter such unlawful/illegal practices abandon such responsibilities to render injustices to African-Americans and/or people of color. Take for example the comment made by the District Attorney as to what he can do simply with a "stroke of a pen," that made the news in the Jena Six matter which resulted in some of the feedback as follows:

> **THE CASE OF THE JENA SIX: BLACK HIGH SCHOOL STUDENTS CHARGED WITH ATTEMPTED MURDER FOR SCHOOLYARD FIGHT AFTER NOOSES ARE HUNG FROM TREE:**

MICHELLE ROGERS: The kids didn't say anything. They were listening. The kids were quiet. And so, District Attorney Reed Walters, you know, proceeded to tell those kids that "I could end your lives with the stroke of a pen." And the kids were just—it was like in awe that the district—you know, Reed Walters would tell these kids that. He held a pen in his hand and told those kids that, "See this pen in my hand? I can end your lives with the stroke of a pen."

(*Cut and pasted* from: http://www.democracynow.org/2007/7/10/the_case_of_the_jena_six)

JENA 6: A TEAM OF LAWYERS TAKE ON MYCHAL BELL'S APPEAL:

Quick summary of the Jena Six case: *In Jena, Louisiana, a black student challenged the de facto segregation of his high school by asking permission to sit under the "white tree." School officials told him to sit where he liked. The next day three nooses hung from the tree, which triggered an impromptu protest by the black students of Jena High. LaSalle Parish District Attorney Reed Walters, flanked by the police, informed the black students at an assembly later that day that he could end their lives "with the stroke of a pen." Racial tensions grew, the school's academic wing was burned, and Robert Bailey, a black student, was attacked by a group of whites at a party. One person was charged with a misdemeanor for that beating. The next day Bailey and two friends were threatened with a shotgun at a convenience store by a white man who had been present at the beating. They wrestled the gun away from him and ran to report the incident to the police, who charged them with robbery of the shotgun. Finally at school two days later, a group of white students, including the noose hangers, taunted Bailey and other students, calling them "niggers." A white student was beaten by a group of black students, taken to the hospital and released within three hours. He attended a school function that night. Six black students were charged with second degree attempted murder for the fight. The first to be tried was Mychal Bell, whose public defender put on no case, called no witnesses, and permitted a friend of the DA, the mother of a prosecution witness, and a good friend of the victim's mother, to be empaneled on the six person jury. Bell was quickly found guilty. Robert Bailey, Theodore Shaw, Carwin Jones, and Bryant Purvis are still waiting to be tried. The sixth of the Jena Six is in the juvenile justice system.*

(Cut and pasted from: http://pursuingholiness.com/2007/07/29/jena-6-a-team-of-lawyers-take-on-mychal-bells-appeal/)

WITH THE STROKE OF A PEN

The events in Jena highlight the urgent need to significantly restrain prosecutorial discretion.

Tensions escalated: An assault on five black teens by a white man was resolved with probation and a mere wrist-slap for the perpetrator, and in a vaguely Mafioso speech seemingly directed at the black students in particular, the district attorney warned that he could end students' lives "with the stroke of a pen." Finally, on December 4, 2006, the eponymous six black students beat up one white student, who had allegedly mocked the injuries of one of black teens injured in the preceding month's assault.

(Cut and pasted from: http://www.hippolytic.com/0112/with_the_stroke_of_a_pen.html)

"*Black students protested the light sentence given to the white students and were promptly threatened by the county's district attorney who said "See this pen? I can end your lives with the stroke of a pen.*"

That's a powerful statement. Its a frightening one. It stands for so much of what can go wrong with our justice system. The widely acknowledged racial biases in sentencing. The fact that lives are literally flushed down the toilet needlessly out of some misguided sense of judicial revenge. The power gap between the accused and the system that can crush them completely.

(Cut and pasted from: http://fitnessfortheoccasion.wordpress.com/2007/09/20/i-can-end-your-lives-with-the-stroke-of-a-pen/)

The same mentality is evidenced in this Court's May 7, 2008 Order. Its rendering an Order it knows is erroneous and for what purposes – to give whites an undue and unlawful advantage over the Petitioner – the record evidence will sustain that Respondent and Real Parties of Interest have not come forth with any facts, evidence or legal conclusions to sustain their defense; but, has relied upon special favors and their relationships with the Justices/Judges of the Court to get rulings the Constitution and laws/statutes clearly prohibit. The Justices/Judges using the "stroke of the pen" to render such injustices - or as it is well known, to keep the "*Petitioner*" being a nice term "in her place." Therefore, it appears that it is inevitable and the Legislature's/Congress' intervention may be necessary for the Petitioner to obtain justice.

32. While this Court may attempt to assert that it is not bias/prejudice towards the Petitioner, the laws are clear that its May 7, 2008 Order is arbitrary and/or capricious. It is not supported by any facts, evidence or legal conclusions presented by the Petitioner in this action and neither does it address the issues raised by the Petitioner to support the relief she seeks.

In support of the above referenced facts, evidence and legal conclusions, the Petitioner relies upon the statements provided in her WOP, subsequent pleadings and that presented in the lower court(s) proceedings.

Please accept this instant MFFFMRONTR as Petitioner's NOTICE to this Court of her notification of seeking the Legislature's/Congress' intervention in this matter and to request an Investigation and Hearings be held to for failure to uphold the Constitution and other statutes/laws, as well as determine whether additional laws are necessary to created, enacted, etc. to address the civil and criminal wrongs found during its Investigation.

PRAYER and RELIEF SOUGHT

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that the Kentucky Court of Appeals grant the relief sought through this pleading. Furthermore, the Petitioner seeks the following relief:

1. This Court provides its findings and fact on the ***issues*** raised in the Petitioner Writ of Prohibition and subsequent pleadings filed in this original action. Said request is made in good faith and pursuant to CR 52.

2. This Court ***vacate*** its May 7, 2008 Order entered in this matter. Said relief is sought in good faith and pursuant to CR76.

3. Seeing that it is not going to uphold the Constitution, that it stay proceedings while the Petitioner seeks the intervention of the Legislature/Congress.

4. For the reasons set forth above and is hereby incorporated as if set forth in full;

5. That the action be dismissed in that the District Court **never** retained jurisdiction over the Petitioner and/or lawsuit in that process was not had in compliance with the laws governing said matters;

6. That Petitioner be granted any and all monetary relief associated with the expenses and/or defense of this action; and

7. Grant the Writ of Prohibition relief sought herein and any and all other applicable relief the Court of Appeals deems just, fair and appropriate to correct the injustice complained of herein.

This 19th day of **May, 2008**.

Respectfully Submitted,

Denise Newsome
Post Office Box 14731
Cincinnati, Ohio 45250
(513) 680-2922

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the forgoing pleading was mailed via U.S. Mail first-class mail on:

D. Brent Irvin, Esq.
Stuart W. Cobb, Esq.
Assistant Attorney General
Office of the Attorney General
General, Civil & Environmental Law Division
700 Capitol Avenue, Suite 118
Frankfort, Kentucky 40602
COUNSEL FOR RESPONDENT

Gailen W. Bridges, Esq.
732 Scott Street
Covington, Kentucky 41011
COUNSEL FOR REAL PARTIES OF INTEREST

Dated this 19th day of **May 2008**.

COURTESY COPIES TO:[2]
Legislature/Congress (Kentucky and United States)
Civil Rights Organizations

DENISE NEWSOME

[2] Senators, Representatives and others of the Petitioner's choice. Providing Copy of Original and/or Applicable documents filed with this Court.

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-000242-OA

DENISE NEWSOME — PETITIONER

v. ORIGINAL ACTION ARISING FROM
KENTON CIRCUIT COURT
ACTION NO. 07-XX-00001

HON. GREGORY M. BARTLETT, JUDGE,
KENTON CIRCUIT COURT — RESPONDENT

GARY M. MARTIN, BERNICE MARTIN,
DENNIS DONNELLAN, BETTY DONNELLAN
AND GMM PROPERTIES — REAL PARTIES IN INTEREST

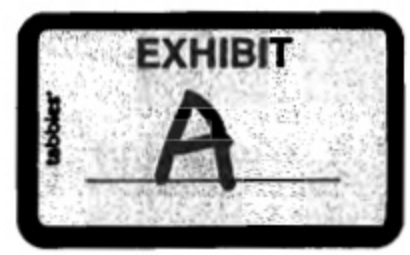
ORDER

* * * * * *

BEFORE: STUMBO AND TAYLOR, JUDGES; KNOPF,[1] SENIOR JUDGE.

This Court has considered the petition for a writ of prohibition and the responses by Judge Bartlett and the real parties in interest. The Court has also considered the petitioner's motions for leave to file replies to the responses to the petition, motion for additional time to file a reply to the response of the real parties in interest, motion to strike statements in the responses and motion for CR 11 sanctions. Being otherwise sufficiently advised, the Court ORDERS that the petitioner's motions

[1] Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.



for leave to file replies to the responses to the petition, motion for additional time to file a reply to the response of the real parties in interest, motion to strike statements in the responses and motion for CR 11 sanctions be DENIED.

A petition for writ of prohibition is an extraordinary remedy which is generally disfavored. *Buckley v. Wilson*, 177 S.W.3d 778 (Ky. 2005). The Kentucky Supreme Court recently clarified the grounds upon which a petition for a writ of prohibition may be granted:

> A writ of prohibition *may* be granted upon a showing that (1) the lower court is proceeding or is about to proceed outside of its jurisdiction and there is no remedy through an application to an intermediate court; or (2) that the lower court is acting or is about to act erroneously, although within its jurisdiction, and there exists no adequate remedy by appeal or otherwise and great injustice and irreparable injury will result if the petition is not granted.

Hoskins v. Maricle, 150 S.W.3d 1, 10 (Ky. 2004). The absence of an adequate remedy by appeal is an "absolute necessity." *Independent Order of Foresters v. Chauvin*, 175 S.W.3d 610, 615 (Ky. 2005).

The Kenton Circuit Court has subject matter jurisdiction and personal jurisdiction over Newsome. An adequate remedy by appeal was available for the district court's forcible detainer judgment by properly appealing to the circuit court and thereafter seeing discretionary review in this Court from any adverse decision. Having failed to use that remedy, the petitioner is not entitled to relief through this original action. A final judgment has yet to be entered in the circuit court action initiated by Newsome (Kenton Circuit Court Action No. 06-CI-03270). The petitioner has an adequate remedy by appeal of any adverse judgment of the circuit court. A petition for writ of prohibition is not a substitute for an appeal. *National Gypsum Co. v. Corns*, 736 S.W.2d 325 (Ky. 1987).

The petition for a writ of prohibition is hereby DENIED.

ENTERED: MAY 07 2008

SENIOR JUDGE, COURT OF APPEALS

IN THE COMMONWEALTH OF KENTUCKY
CIRCUIT COURT OF KENTON COUNTY, KENTUCKY

DENISE NEWSOME — PLAINTIFF

vs.

CIVIL ACTION NO. 06-CI-3270
DIVISION III

GARY M. MARTIN, BERNICE MARTIN,
DENNIS DONNELLAN, and BETTY DONNELLAN,
d/b/a GMM PROPERTIES — DEFENDANTS

COMPLAINT
(JURY TRIAL DEMANDED)

Plaintiff, Denise Newsome (hereinafter "Plaintiff"), in support of this Complaint against Defendants, Gary M. Martin, Bernice Martin, Dennis Donnellan and Betty Donnellan (hereinafter collectively, partially and/or separately "Defendant(s)") would state the following *claims*:[1]

PARTIES

1. Plaintiff, Denise Newsome is a resident of Kenton County, Kentucky and residing at 128 East 5th Street – Apartment 5, Covington, Kentucky, 41011.

2. Defendants, Gary M. Martin (hereinafter individually known as "Defendant" or "Defendant Martin") is, and at all times mentioned conducts a business and/or fictitious business entitled, "GMM Properties," from an address located at 1046 Arden Drive, Fort Mitchell, Kentucky 41017 and may be served with process in this proceeding by serving Defendant at 1046 Arden Drive, Fort Mitchell, Kentucky 41017. This Defendant performs the obligations as Landlord under 383.505 to 383.715 of the Kentucky Uniform Residential Landlord and Tenant Act and under the rental agreement and expending or making available for the purpose of all rent collected from the premises. Defendant was requested to provide the Plaintiff with *service of process* information as required by law pursuant to 383.585 (Disclosure) of the Kentucky Uniform Residential Landlord and Tenant Act; however, to date, has elected to obstruct the Plaintiff's pursuit of justice by withholding this information.

3. Defendants, Gary Martin, Bernice Martin, Dennis Donnellan and Betty Donnellan (hereinafter individually and or collectively known also as "Defendants") is, and at all times mentioned conducts a business and/or fictitious business entitled, "GMM Properties," from an address located at 1046 Arden Drive, Fort Mitchell, Kentucky 41017 and may be served with process in this proceeding by serving Defendant Gary Martin at 1046 Arden Drive, Fort Mitchell, Kentucky 41017. These Defendants are owners and/or have interest in ownership of building in which the Plaintiff resides and perform the obligations as Landlord under 383.505 to 383.715 of the Kentucky Uniform Residential Landlord and Tenant Act and under the rental agreement and expending or making available for the purpose of all rent collected from the premises. Defendants were requested to provide the Plaintiff with *service of process* as required by law pursuant to 383.585 (Disclosure) of the Kentucky Uniform Residential Landlord and Tenant Act; however, to date, have elected to obstruct the Plaintiff's pursuit of justice by withholding this information.

[1] Information redacted on Exhibits where applicable.

Exhibit "78"

JURISDICTION

4. Jurisdiction is vested in this Circuit Court in that the relief sought in this civil action will exceed $4,000.00. Moreover:

> The Circuit Court is the court of general jurisdiction over cases involving capital offenses, felonies, land disputes, contested probates of wills, and general civil litigation in disputes involving more than $4,000. Circuit courts have the power to issue injunctions, writs of prohibition, writs of mandamus and hear appeals from district courts and administrative agencies.
>
> Pursuant to 383.540 of the Kentucky Uniform Residential Landlord and Tenant Act, ". . . In addition to any other method provided by rule or by statute, personal jurisdiction over a landlord or tenant may be acquired in a civil action or proceeding instituted in the court by the service of process in the manner provided by this section."

VENUE

5. Venue is proper in the Commonwealth of Kentucky, Circuit Court of Kenton County, Kentucky as the cause of action occurred or accrued in Kenton County, Kentucky.

STATEMENT OF FACTS

6. By a written Lease Agreement entitled, "GMM PROPERTIES LEASE AGREEMENT" (hereinafter "Lease" and or "Lease Agreement") dated September 28, 2006, entered between the Plaintiff and Defendant, Gary Martin on behalf of GMM Properties and Defendants, and/or leased for twelve (12) months (one-year period), commencing on October 1, 2006, the premises at 128 East 5th Street – Apartment 5, Covington, Kentucky 41011, in Kenton County, Kentucky (hereinafter "Apartment") for $675.00 per month, payable as follows:

> "RENT IS DUE IN ADVANCE ON THE FIRST DAY OF EACH MONTH, AND SHOULD BE SENT TO: GMM PROPERTIES, P.O. Box 17305, FT. MITCHELL, KY 41017. A 60.00 DOLLAR LATE CHARGE WILL BE IMPOSED ON ANY RENTAL PAYMENT RECEIVED AFTER THE 3RD DAY OF EACH MONTH. TENANT IS ALSO CONSIDERED IN DEFAULT IF RENT IS NOT RECEIVED BY THE 5TH DAY OF EACH MONTH. LANDLORD RESERVES THE RIGHT TO INCREASE THE RENT AFTER 12 MONTH HAVE EXPIRED, AT ANY TIME UPON THIRTY (30) DAYS NOTICE TO TENANT, FURTHERMORE, UPON EXPIRATION OF THE TERM OF THIS LEASE, AT THE OPTION OF THE LANDLORD, TENANT MAY REMAIN ON THE PREMISES ON A MONTH-TO-MONTH BASIS, UNDER THE CONDITIONS AND CONVENTS HEREIN."

See **Exhibit A** attached hereto and hereby incorporated by reference and mad a part of this pleading.

7. ARTICLE XI of the Lease makes provisions for an award of reasonable attorney fees to the prevailing party in any litigation involving the lease.

8. The Plaintiff request the awarding attorney fees and costs associated with this action.

9. On or about September 15, 2006, the Plaintiff saw an advertisement in the Cincinnati Enquirer newspaper advertising the property in which she leased for rent. A copy of the newspaper article is attached hereto as **Exhibit B**, and is incorporated herein by reference and made a part of this pleading.

10. The advertisement placed in the Cincinnati Enquirer was done to induce the Plaintiff and other potential tenants into a contract. Defendants doing so with knowledge that the amenities and/or premises/Apartment conveyed in the article were in need of repair and not ready for habitation

11. Defendant(s) made and approved dissemination of the article in the Cincinnati Enquirer with the intent, directly or indirectly, to induce members of the public, including Plaintiff to enter into a lease of the Apartment.

12. The Defendant(s) and at all times mentioned in this Complaint were the owners, co-owners and/or had an interest in the Apartment in which the Plaintiff leased.

13. On or about September 15, 2006, the Plaintiff called the phone number listed with the advertisement placed in the Cincinnati Enquirer to make further inquiry of the apartment and whether it was still available for rent. Plaintiff spoke with Defendant Martin and he advised that the apartment was still available for rent and had not been rented.

14. Plaintiff and Defendant Martin verbally agreed to meet at the residence located at 128 East 5th Street in Covington, Kentucky so that she may look at the apartment.

15. On September 16, 2006, while reviewing the Apartment, the Plaintiff inquired of Defendant Martin, what was the cause/origin of the stains in the carpeting. Defendant Martin advised the Plaintiff that the previous tenant had a plant.

16. On September 16, 2006, while reviewing the Apartment, the Plaintiff inquired of Defendant Martin, what was the cause/origin of the smell/odor she detected. Defendant Martin advised the Plaintiff that there was *no* smell and that he *did not* smell anything.

17. On September 16, 2006, while reviewing the Apartment, the Plaintiff inquired of Defendant Martin, whether the previous tenant(s) had pets or animals. Defendant Martin advised the Plaintiff that the previous tenant did not have pets/animals and that pets/animals were not allowed. The Plaintiff inquired as to whether the stains in the carpet were due to pets/animals. Defendant Martin advised the Plaintiff they were not and that pets/animals were not allowed or kept in the Apartment.

18. According to "ARTICLE V: TENANT RESPONSIBILITIES" of the Lease Agreement, it states: "**NO PETS** OF ANY NATURE ARE PERMITTED WITHOUT WRITTEN APPROVAL FROM THE LANDLORD. Plaintiff since moving into the Apartment building have seen pets in the building and tenants with their pet(s).

19. Defendants knew and/or should have known that previous tenant(s) who leased the Apartment rented by the Plaintiff kept pets/animals. Defendants are aware that other tenants in the

Apartment building have pets. The Defendants knew and/or should have known what type of stains were in the carpeting; however, elected to withhold the information from the Plaintiff and advise that *no* pets/animals were kept in the apartment and the stains *were not* that of pets/animals.

20. On September 16, 2006, while reviewing the Apartment, the Plaintiff inquired of Defendant Martin, what was the age of the carpeting in the apartment. Defendant Martin advised the Plaintiff that the age of the carpeting was two (2) years old. The Plaintiff inquired of Defendant Martin as to why a carpet only two (2) years old was so badly stained and worn. Defendant Martin advised the Plaintiff that there was a pool table in the apartment.

21. On September 16, 2006, while reviewing the Apartment, the Plaintiff inquired of Defendant Martin as to the safety of the apartment building and whether the alarm system in the apartment was working/operable. Defendant Martin advised the Plaintiff that the alarm system was indeed working/operable; however, it is only for intrusion purposes and is not connected to a monitoring service, but she can have it connected to a monitoring service and they would be able to do it by simply connecting it through the system there.

22. Defendant Martin, conducted Plaintiff on a tour of the Apartment, pointing out its various features, including security features such as the alarm system, front and back door entrances to the building with access being controlled by tenants.

23. Plaintiff made it known to Defendant Martin that she was interested in having the alarm system monitored by a security company. Defendant assured the Plaintiff such monitoring could be done, all that was required is that she have a working phone line and the alarm/security company can connect the alarm system in the Apartment to the monitoring service.

24. Defendant Martin making representation with knowledge that the alarm system in Plaintiff's Apartment was extremely old and that it was not functional, operational and not compatible for an upgrade and/or monitoring by a security alarm company as represented to the Plaintiff.

25. Defendant Martin made such representation with knowledge of Plaintiff's concerns and her intent to lease a luxury apartment at "The Village at Stetson Square," in Cincinnati, Ohio. Plaintiff providing the Defendant with brochure and explaining the many features offered by Stetson Square. **Exhibit C** attached hereto is a copy of the brochure of "The Village at Stetson Square" and incorporated herein and made a part of this pleading. With such knowledge, Defendant proceeded to represent to the Plaintiff the security features of the Apartment for the purpose of inducing her into the leasing of the Apartment.

26. Defendant Martin making representations to the Plaintiff with knowledge that the information he was providing to be false and that Plaintiff was unaware of any past crimes (if any) committed on the premises. Defendant made the representations regarding the safety of the building and the Apartment with the intent to induce the Plaintiff to lease the Apartment in the building.

27. Defendant Martin was made known of the concerns the Plaintiff had in that she was relocating to the area and had concerns as to the safety of the building.

28. On September 16, 2006, while reviewing the Apartment, the Plaintiff inquired of Defendant Martin, what was the reason for the dirty apartment. Defendant Martin advised the Plaintiff that he had people in there cleaning and they are still in the process of cleaning and preparing the apartment.

29. On September 16, 2006, while reviewing the Apartment, Defendant Martin pointed out to the Plaintiff that there was a smoke detector. When Plaintiff inquired of Defendant Martin whether it worked, Defendant Martin advised the Plaintiff that it did.

30. On September 16, 2006, while reviewing the Apartment, the Plaintiff inquired of Defendant Martin, whether the Jacuzzi bathtub worked. Defendant Martin advised the Plaintiff that it did and demonstrated that it did. The Plaintiff inquired as to the faucet fixtures on the tub in that during demonstration, they were not operable. Defendant Martin advised the Plaintiff that the faucet fixtures would be repaired prior to move in. To date the faucet features have not been corrected. Since moving in Defendant Martin admitted to correcting the problem; however, no such repairs to the bathtub have been completed and/or corrected.

31. On September 16, 2006, while reviewing the Apartment, the Plaintiff inquired of Defendant Martin, what was the deposit for the Apartment. Defendant Martin advised the Plaintiff that the deposit was the same as the rent amount. However, in order to hold the Apartment he would need to have at least ½ (half) the deposit to hold it. Defendant Martin also advised the Plaintiff that he has an appointment to show the Apartment to another person shortly, that if she wanted it, she would need to go ahead and complete the application and leave half of the deposit. The statement made by Defendant Martin was done to induce the Plaintiff into completing the application and entering into a lease agreement. The Plaintiff expressed her interest in wanting to rent the apartment and conveyed to Defendant Martin based on what she was told she liked it and therefore, to keep from losing the opportunity to rent it, she was interested in leaving a deposit and leasing the Apartment.

32. On September 16, 2006, after reviewing the Apartment and based on the representations made to her by Defendant Martin, the Plaintiff completed the application and left ½ (half) the deposit for the Apartment.

33. On or about September 25, 2006, the Plaintiff contacted Defendants to determine whether or not the Apartment would be ready for move-in. Defendant Martin was not available; therefore, a representative of GMM Properties, Drew (hereinafter "Drew"), contacted the Plaintiff and advised the Plaintiff that Defendant Martin was out of town; however, he was left with instructions on how to handle and that the Apartment would be ready for move in as scheduled.

34. On September 25, 2006, in conversation with Drew, the Plaintiff inquired as to whether the Apartment had been cleaned and the necessary repairs made. Drew advised the Plaintiff that the repairs had been made; however, he would be speaking with Defendant Martin to find out. Drew advised the Plaintiff that Defendant Martin was out of town on vacation for approximately two (2) weeks.

35. Drew contacted the Plaintiff and advised her that he would be available to meet with her to sign the Lease on Thursday, September 28, 2006.

36. On September 28, 2006, Plaintiff met with Drew at the Apartment to sign the Lease. Plaintiff inquired as to whether the repairs had been made to the apartment. Drew advised the Plaintiff that they had; however, the faucet issue would have to be repaired when Defendant Martin returned from vacation.

37. On September 28, 2006, during the Plaintiff's meeting with Drew to sign the Lease, he provided the Plaintiff with a document entitled, *"Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazard."* See attached hereto as **Exhibit A** in which it was part of the documents provided after the signing of Lease, and is hereby incorporated by reference.

38. On September 28, 2006, after Drew had provided the Plaintiff with the document entitled *"Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazard,"* the Plaintiff inquired of Drew whether there has ever been any mold found or evidence of mold in the Apartment or building. Drew advised the Plaintiff that there had not been any mold found to his knowledge.

39. On September 28, 2006, during the meeting with Drew, he asked the Plaintiff where she worked. Plaintiff advised Drew that she worked for a law firm in Cincinnati.

40. On September 28, 2006, during the meeting with Drew, Drew provided the Plaintiff with a document entitled, "*Property Entry and Exit Inspection*" requesting that the Plaintiff sign it. The Plaintiff advised Drew that she has not had time to inspect the premises and therefore could not validate the contents of the document; however, she was only signing the document "AS TO FORM," and would inspect the Apartment at a later time and advise in writing her findings of the Apartment. Drew acknowledged the notation made by the Plaintiff by her signature and she explained also noting the "AS TO FORM" on the copy he provided her.

41. The Plaintiff believes her action in signing document and notifying of intent to submit her findings in writing is in compliance with the laws governing said matters pursuant to landlord and tenant matters, wherein it states, "*. . . may present the landlord with a signed statement of dissent describing the items he finds to be incorrect.*" *Kentucky Landlord Guide*On October 15, 2006, the Plaintiff provided the Defendants with document entitled, *"CONCERNS"* and provided a distinct listing of damages.

42. Pursuant to 383.580 (Security Deposit) of the Kentucky Residential Uniform Landlord and Tenant Act:

> Prior to tendering any consideration deemed to be a security deposit, the prospective tenant shall be presented with a comprehensive listing of any then existing damage to the unit which would be the basis for a charge against the security deposit *and* ***the estimated dollar cost*** *of repairing such damage. .*
> .
>
> The landlord and tenant shall sign the listing, which signature shall be conclusive evidence of the accuracy of such listing, but ***shall not*** be construed to be conclusive of **latent** defects. . .

Underline, italics and boldface added for emphasis.

43. Under Kentucky law, Defendants were required to provide and/or make available to the Plaintiff a "Damage List" of any existing damage to the property, and the cost estimate for the necessary repairs before she moved in." Defendants knew and/or should have known (as landlord) what their duties and obligations were under the laws. They went as far as providing the *Property Entry and Exit Inspection* document, therefore, they having knowledge of their other obligations under the laws. However, the Defendants failed to do so. While the Plaintiff has requested this information from Defendants, the Defendants have refused to provide her with this information.

44. On October 12, 2006, the Plaintiff contacted Defendants and notified them of her concerns and intention of having the carpeting cleaned. The Plaintiff believing the carpet could be cleaned based on the representations (carpeting was only two [2] years old) given her by Defendant Martin. Such effort by the Plaintiff was made in good faith to correct the concerns and or damages reported to the Defendants about the carpeting.

45. Defendant Martin contacted the Plaintiff and advised her that she may have the carpet cleaned. Defendant doing so without disclosing to the Plaintiff the true age of the carpeting in the Apartment.

46. October 14, 2006, based on the representations of Defendant Martin, Plaintiff had a professional carpet cleaning company, Stanley Steemer, come out and clean the carpeting in the Apartment. At such time, the Plaintiff was informed by Stanley Steemer's representative that the carpeting was not two (2) years old as represented to her. Not only that, the Stanley Steemer representative noted the condition of the carpeting as:

a) Sun fading of carpet or upholstery;

b) Stains on baseboards;

c) Carpet Splitting and separation of seams *due to poor* installation;

d) Excessive soap prior to our cleaning;

e) ssorted colored spots permanent discoloration soda orange juice cosmetics;

f) ***Excessive carpet wear*** and ***fiber breakdown***;

g) Animal stains/pet odor;

h) Carpet *swells* or *ripples due to poor* installation;

i) Carpet nap runs in opposite direction. May show up as dirty.

Boldface and italics added for emphasis. See attached hereto as **Exhibit D** and herein incorporated by reference and made a part of this pleading.

47. Pursuant to 383.635 (Remedies of noncompliance that affects health and safety) of the Kentucky Uniform Residential Landlord and Tenant Act, it states:

> . . . the tenant may cause the work to be done in a workmanlike manner and, after submitting to the landlord an itemized statement for the work actually done and for which the tenant has paid in full, deduct from his rent the actual and reasonable cost or the fair and reasonable value of the work, not exceeding the amount specified in this subsection.

48. Defendants were provided with an *estimate* of what the cost associated with the carpet cleaning would cost. Moreover, the Plaintiff made diligent efforts to contact the Defendants to notify of the cost associated with the carpet cleaning; however, Defendants made nobody available – not even on emergency listing. An action common by the Defendants – failure to make themselves on emergency basis.

49. On or about October 15, 2006, the Plaintiff provided GMM Properties with the remaining balance of the rental deposit due.

50. On October 15, 2006, the Plaintiff contacted Defendants and notified them in writing of "CONCERNS." In said documentation, the Defendants were provided with "**NOTIFICATION OF ADDITIONAL DAMAGES/CONCERNS**." Some of the damages in which the Plaintiff has taken photographs of are as follows:

a. Mold damage and roof leaks;

b. Defective Smoke Detector – and replacement detector;

c. Defective outlet (missing receptacle) – and repaired outlet;

d. Rotting and decaying cupboard due to water leak;

e. Damaged/Stained Carpeting;

f. Alarm System;

g. Door Knob;

h. Lighting fixtures;

i. Dirty/Damaged Stove;

j. Dirty Refrigerator;

k. Dirty toilet;

l. Tub fixtures;

m. Broken phone jack;

Copies of color photographs have been filed with this Court under pleading entitled, "*Notice-Motion for Order to Deposit Money in Court* – at Exhibit 'A'."

51. On or about October 16, 2006, Defendants provided a letter to tenants regarding security of the building. Said document supports the Defendants knowledge that the doors to the building are not in full repair and/or are not closing properly. Rather than correct the problems, the Defendants elected to distribute a memorandum in an effort to cover-up/shield/mask the defects in the doors at the main entrances to the building. The Defendants with knowledge as to the defects in these doors, have elected not to correct the problems; however, attempt to shift such responsibility on the tenants. Proper closing which can be corrected by the applicable maintenance of doors.

52. Defendants' notice of 10/16/06, to tenants states in part:

> "This letter is in regard to the front and back door of your building. It has been noticed that the door has not been fully shut on more than one occasion. . . ."

53. The October 16, 2006 correspondence from Defendants was executed and distributed one day after and/or upon receipt of the Plaintiff's October 15, 2006 correspondence, which addressed security concerns. Defendants providing information in an effort to cover up their illegal actions in which they provided the Plaintiff false information regarding the security of the building.

54. On or about October 19, 2006, a Stanley Steemer representative contacted the Plaintiff to see how the carpeting was. Plaintiff advised representative that areas are still evidencing stains and odor. The representative advised the Plaintiff that their representatives will come out again on Saturday, October 21, 2006, and try resolving the problem.

55. On or about October 20, 2006, the Plaintiff met with Defendant Martin at her residence in regards to the concerns brought to Defendants attention. At said meeting Defendant Martin showed up without the list of concerns the Plaintiff provided Defendants on October 15, 2006. Defendant Martin doing so for the purposes of attempting to cover-up and in furtherance of breach of the covenant to repair. It was obvious from the actions and/or behavior of Defendant Martin that he was attempting to shield and/or mask an illegal animus.

56. On October 20, 2006, while the Plaintiff had produced applicable Kentucky statutes and/or laws to Defendant Martin during their meeting, Defendant Martin elected to reject the documents presented him. Defendant Martin doing so with knowledge that his actions were in violation of the laws governing said matters.

57. During Plaintiff's October 20, 2006 meeting with Defendant Martin, Defendant conveyed to the Plaintiff that the carpeting was actually older than two (2) years old. Defendant acknowledged that the carpeting was well over five (5) years. When the Plaintiff inquired as to the actual age of the carpeting, Defendant Martin refused to provide her with this information. Moreover, Defendant Martin advised that he can get documentation from people stating there were no animals/pets kept in the apartment because he knew the previous tenants real well. That he had just coincidentally just began to allow tenants to keep pets in the building.

58. On October 20, 2006, the Plaintiff provided Defendants with correspondence in regards to their meeting held on said date.

59. On October 21, 2006, Stanley Steemer representatives returned to work on concerns addressed by Plaintiff. Representative advised that there was nothing more that they could do. Plaintiff advised representatives of landlord advising her that the age of the carpeting was actually older than (two [2] years old) that represented to her and her reliance on this information in presenting to them on their last visit. Plaintiff apologizing for the inconvenience.

60. In response her follow-up letter, on or about October 23, 2006, Defendant Martin provided the Plaintiff with written documentation regarding the meeting of October 20, 2006, wherein he attempts to mask/shield Defendants failure and/or breach to repair the residence on "three (3)" items rather than address the concerns provided in Plaintiff's correspondence of October 15, 2006, wherein a response to said concerns were timely, adequately and properly requested. Actions by Defendant Martin on behalf of Defendants were done in an effort to cover-up and/or mask their unlawful actions and/or practices. Practices outlawed many years ago.

61. In Defendants 10/23/06 correspondence to the Plaintiff it states, "*As far as threatening to evict you. I did absolutely say those words, but you seem to forget you told me you would DEDUCT CARPET FROM YOUR RENT. As I explained this is not acceptable. We expect our rent or an eviction notice will be given.*"

62. Pursuant to KRS 383.635(1) of the Kentucky Uniform Residential Landlord and Tenant Act, provides for allowances for deductions from the rent.

63. As a result of such abuse and misuse of the premises/Apartment by Defendants, in the breach of the covenant of repair, care and maintenance of the leased premises/Apartment, Plaintiff has suffered and continues to suffer.

64. Plaintiff has demanded that the Defendants repair the defects made known to them; however, the Defendants have retaliated and elected to subject the Plaintiff to undue and/or burdensome demands to continue to subject her to additional distress as well as threats of eviction.

65. On or about October 25, 2006, Joe Morrison with the City of Covington, Kentucky Code Enforcement Department came out and inspected the premises/Apartment of the Plaintiff. The following violations were found:

a) 704.1 SMOKE DETECTORS. SMOKE DETECTOR INOPERABLE;

b) 304.3 INTERIOR SURFACES. CEILING DISREPAIR IN BEDROOM CLOSET, POSSIBLE ROOF LEAK;

c) 605.1 ELECTRICAL EQUIPMENT INSTALLATION. RECEPTACLE COVER MISSING IN REAR BEDROOM; and

d) 304.3 INTERIOR SURFACES. WALL OR CEILING IN DISREPAIR IN FRONT AND REAR HALL ON THE THIRD FLOOR. POSSIBLE ROOF LEAK.

See **Exhibit E** attached hereto and hereby incorporated by reference and made a part of this pleading.

66. Violations the Defendants knew and/or should have known existed in that they performed an inspection of the premises/Apartment pursuant their document entitled *"Property Entry and Exit Inspection."* See **Exhibit A** attached hereto and incorporated herein by reference a made a part of in this pleading.

67. On or about October 24, 2006, Plaintiff provided Defendants with a response to their correspondence of October 23, 2006, and placed them on notice of deduction of cost associated with carpet cleaning from rent, concerns of Defendants' retaliation, provide them with the applicable statutes and/or laws supporting the actions taken by her.

68. The Plaintiff has repeatedly in *good faith* tried to resolve these issues raised in a professional and amicable manner; to no avail. Defendant Martin, on behalf of Defendants, has made it very difficult for the Plaintiff and is unwilling to work during the times (4:00 p.m. – 6:00 p.m.) Monday through Friday and has refused to work on Saturday or Sunday to correct the dangerous conditions and health and safety concerns brought to their attention. Defendants have provided no just cause or reason why work cannot be conducted between 4:00 p.m. through 6:00 p.m. on weekdays (Monday through Friday) and simply stated that their people did not work on Saturdays or Sundays.

69. Defendants have further, through their refusal to make the necessary repairs to the Apartment as required by law, decided to make it difficult and to cause the Plaintiff additional distress, injury and harm in trying to set the dates and time in which repairs will be performed. Repairs which should have been completed prior to the Plaintiff's move in. The actions by the Defendants are in *bad faith.* Repairs which Defendants knew and/or should have known *were not* completed. Defendant Martin in his own admission acknowledges inspection of the Plaintiff's Apartment; however, elected to falsify information provided in the *"Property Entry and Exit Inspection"* sheet. Action by Defendant Martin was done with intent to induce the Plaintiff into the Lease Agreement and to cause her legal injury.

70. On or about October 26, 2006, Defendants were contacted by the Code Enforcement Department and notified of citation(s) to be issued if the Apartment and/or premises are not brought into compliance with the laws.

71. Defendants refused and continues to refuse to work with the times and dates provided by the Plaintiff. Defendants were given a deadline in which work is to be completed of November 25, 2006. Said refusal by Defendants to work with the Plaintiff is for the purposes of harassing and subjecting the Plaintiff to undue hardship, burden her and subject her to additional distress.

72. On November 18, 2006, Plaintiff received correspondence dated November 17, 2006, from an attorney by the name of Gailen W. Bridges ("Bridges"), advising her that Defendant Martin had *contacted* **not** retained him regarding her tenancy at 128 E. 5th Street, Covington, Kentucky 41011, returning the November rent paid and requesting additional rent in which Defendants **are not** entitled to as a matter of law, and threatening the Plaintiff with eviction if she fails to pay the entire November rent. The action taken by Bridges and Defendant Martin has been done to unlawfully and illegally induce/coerce the Plaintiff, through such threats, to forego protected rights.

73. In closing of the November 17, 2006 letter, Bridges states, "*Mr. Martin has indicated that if you are that unhappy with the premises that he is willing to release you from your lease and you may find accommodations elsewhere, and he will return the deposit if the premises are in good condition. This would be in return for complete mutual release between the parties.*"

74. Kentucky law provides, "*If the landlord fails to comply with the notice, however, causes the tenant to move, the landlord* ***must return all prepaid rent****.*" (boldface added for emphasis) See **Exhibit F** attached hereto, incorporated by reference and made a part of this pleading.

75. The correspondence from Bridges, does not state that he is representing Defendant Martin and/or Defendants in this matter. Correspondence from Bridges was produced in furtherance of the retaliation and harassment of the Plaintiff for her exercising of protected rights under the laws governing said matters. Documentation was produced to insight fear and subject the Plaintiff to additional distress.

76. Kentucky laws are clear that "*If the landlord* ***does not*** *put the security deposit in a separate account, or* ***does not*** *furnish the two different lists of damages as described, he is* ***not*** *entitled to retain any part of the deposit for any reason.*" (boldface and underline added for emphasis). See **Exhibit F** attached hereto and incorporated by reference and made a part of this pleading.

77. The demand issued by Bridges is frivolous and clearly goes against the laws governing such matters. Therefore, the Plaintiff has and/or had no duty to act upon such demand(s).

78. The Plaintiff paid Defendants rent in the amount of $675.00 for the month of October 2006, and $401.00 ($675.00 less the cost [$274.00] associated with carpet cleaning]) for the month of November as required by the Lease Agreement and/or the laws governing Landlord and Tenant matters. For a total sum of $1,076.00 that Plaintiff has occupied the Apartment.

79. Since the Plaintiff's leasing of the Apartment, Defendant Martin has taken it upon himself to enter her Apartment without the applicable notices as required by law. Such notice which is required pursuant to 383.615 (Access) of the Kentucky Uniform Residential Landlord and Tenant Act. See **Exhibit F** attached hereto and incorporated herein by reference a made a part of in this pleading. Such actions by Defendant(s) is unlawful and prohibited by law.

80. If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may obtain ***injunctive relief*** to prevent the reoccurrence of the conduct or terminate the rental agreement. In either case the tenant may recover actual damages and reasonable attorney's fees.

81. The Plaintiff has performed all the terms and conditions required of her under the Lease Agreement.

82. The Defendants have failed to perform their duties under the Lease Agreement and under the applicable laws governing the covenant to repair.

83. After October 1, 2006, when Plaintiff moved into the premises, Plaintiff became increasingly aware of the numerous defective and dangerous conditions described above, and others, including but not limited to those outlined in her letter dated October 15, 2006..

84. Commencing on or about September 25, 2006, and continuing through November 15, 2006, Plaintiff repeatedly notified Defendants (both verbally and/or in writing) of her concerns of the defective and dangerous conditions as well as, during this time frame, notified Defendants as to concerns of health and safety violations.

COUNT I
FRAUD/MISREPRESENTATION

85. Plaintiff incorporates Paragraphs 6 through 84 of this Complaint as if set forth in full. In support of the instant Complaint, the laws are clear in defining Fraud and Misrepresentation:

86. **Fraud** is defined as: (1) An intentional perversion of the truth for the purpose of inducing another in reliance upon it to surrender a legal right; (2) A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury; (3) Any kind of artifice employed by one person to deceive another; (4) A generic term, embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to get advantage over another by false suggestions or by suppression of truth, and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated. See *Black's Law Dictionary*, Fifth Edition by Henry Campbell Black, M.A.

87. Defendant Martin on behalf of himself and Defendants made false representations of a matter fact by words and by conduct, by false misleading allegations, concealed information of material fact that should have been disclosed, for the purposes of deceiving the Plaintiff so that she would act upon

it with knowledge to cause her legal harm. Defendant Martin doing so with full knowledge that his actions were fraudulent and done with the purposes of causing the Plaintiff legal injury.

88. The actions by Defendant Martin and/or Defendants were done to deceive the Plaintiff.

89. Defendant Martin on behalf of himself and Defendants embraced all multifarious means through ingenuity in which he could devise and which he resorted to, to get advantage over Plaintiff by providing false suggestions, suppressing the truth and relied upon deceit, tricks, craftiness, dissembling and any unfair way by which Plaintiff was cheated. Defendant Martin doing so with full knowledge that his actions were fraudulent and done with the purposes of causing the Plaintiff legal injury.

90. ***Elements*** of a cause of action for **"fraud"** include false representation of a present or past fact made by defendant, action in reliance thereupon by plaintiff, and damage resulting to plaintiff from such misrepresentation. See *Black's Law Dictionary*, Fifth Edition by Henry Campbell Black, M.A.

91. **Fraudulent representation** is defined as: A false statement as to material fact, made with intent that another rely thereon, which is believed by other party and on which he relies and by which he is induced to act and doe act to his injury, and statement is fraudulent if speaker knows statement to be false or if it is made with utter disregard of its truth or falsity. See *Black's Law Dictionary*, Fifth Edition by Henry Campbell Black, M.A.

92. **Misrepresentation** is defined as: A manifestation by words or other conduct by one person to another that, under the circumstances, amounts to an assertion not in accordance with the facts. An untrue statement of fact. An incorrect or false representation. That which, if accepted, leads the mind to an apprehension of a condition other and different from that which exists. Colloquially it is understood to mean a statement made to deceive and mislead. See *Black's Law Dictionary*, Fifth Edition by Henry Campbell Black, M.A.

93. Defendant Martin on behalf of himself and Defendants misrepresented by words and conduct to the Plaintiff, given the circumstances, which amounts to an assertion not in compliance with the facts. Moreover, Defendant Martin prepared a *Property Entry and Exit Inspection* document to solidify the fraud and misrepresentation of the facts. See **Exhibit A** attached hereto and incorporated herein by reference and made a part of this pleading.

94. Defendant Martin knew and/or should have known that acceptance of misrepresentations made, would lead the mind to an apprehension of a condition other and different from that which exist.

95. The *Property Entry and Exit Inspection* document prepared by Defendant Martin, contradicts the evidence and actual conditions of the premises/Apartment leased. Defendant Martin knew and/or should have known that his representation in said document was false and/or fraudulent, and that based upon such, it may be concluded that his acts were fraudulent and done to induce the Plaintiff into lease.

96. Defendant Martin on behalf of himself and/or Defendants, intentionally perverted the truth in representation of "material facts" regarding the premises/Apartment located at 128 E. 5th Street, Apartment 5, Covington, Kentucky, for the purposes of inducing the Plaintiff to rely upon said representations and to get her to surrender legal rights.

97. Plaintiff reasonably relied upon the described statements of the Defendants, and believed them to be true, and had no reason to doubt the validity of the statements made to her in that she asked specific questions and was assured by Defendant that there was no need for the concerns conveyed. Had

the Plaintiff known the true facts associated with the Apartment, she would have completed the application and entered into the lease. The Plaintiff relied upon the representations made to her by the Defendant and/or their representative(s).

98. When Defendant(s) and/or their representative(s) made the representations above, Defendant(s) had no reasonable grounds to believe them to be true in that they are the owner(s) of the Apartment leased and in documentation state an inspection was conducted. See **Exhibit A** - Lease Agreement document entitled, "*Property Entry and Exit Inspection.*"

99. At the time Defendant Martin rented/leased the Apartment to the Plaintiff, he knew that the premises/Apartment was unfit for human occupation, in that they substantially failed to comply with the statutes and/or housing codes of the state of Kentucky, County of Kenton, which are designed to protect a tenant's health and safety.

100. Specifically, at the time Plaintiff took possession, the premises were uninhabitable and unfit for human occupation, in that among other things, there were safety and health violations – the smoke detector did not work and the flooring (carpeting, padding and woodwork) had been infested with urine and other specimen/stains. Therefore, when the carpeting was damaged with such infestation, it went through the carpeting, into the padding beneath the carpeting and in the wood of the floor where such urine and other specimen has been trapped and has heavily been absorbed in the carpeting, padding and woodwork. The carpeting is heavily damaged and *reeked* with odor. None of these conditions and those reported by the Plaintiff were known prior to or at the time Plaintiff moved into the premises.

101. In breach of Defendants' covenant for the covenant of repair and sanitary maintenance and care of the leased premises, Defendants knowingly permitted urine and other known specimen to accumulate in the carpeting, padding and woodwork of the premises, with the result that the carpeting, padding and woodwork in the Apartment/premises would become stained, discolored, permeated with odor, and worn to the extent far exceeding the ordinary wear and tear caused by ordinary and reasonable use of the premises/Apartment.

102. At the time of Plaintiff's completion of the application and signing of the lease, Cincinnati Bell still had the phone services listed as active. The Plaintiff had to provide a copy of the lease agreement to a Cincinnati Bell representative to show that she is the current resident and/or person currently living at the 128 E. 5th Street, Apartment 5 address in Covington, Kentucky.

103. Prior to Plaintiff's moving into the Apartment, she also notified Defendants of what Cincinnati Bell representatives advised her of "service still being active in the Apartment." Defendant Martin attempted to act surprised; however, knew and/or should have known the facts and/or reasons behind why the phone service may have been on. While he advised the Plaintiff that he would contact Cincinnati Bell to clear up the matter, Martin failed to do so.

104. Plaintiff believes the Defendants have an elaborate scam/scheme going on wherein they fraudulently leasing/renting the premises/Apartment to potential tentant(s), such as Plaintiff, and then when tenants complained about Defendants failure to repair and/or breach of covenant to repair, Defendants (with the assistance of Bridges and/or other attorneys) sought to have them evicted and retain the deposit(s) collected asserting the premises/Apartment was not in good condition. And may proceed to also collect the entire amount under the contract. Collecting and retaining rent for an inhabitable Apartment.

105. Kentucky Rules of Civil Procedure ("KRCP") – Rule 9, provides, when fraud is alleged, it must be particularized but it still must be short, plain, simple, concise and direct as is reasonable under the circumstances.

106. Fraud pleading requirements does not impose on pleader burden of highly detailed averments but requires only that pleadings set forth facts sufficiently identifying circumstances constituting fraud so that defendant will be able to frame adequate responses. *Brown v. Joiner Intern., Inc.*, 523 F.Supp. 333 (1982).

107. The Plaintiff need not allege facts showing that the Defendant knew he was misleading when he made allegedly misleading statements; generally allegations of knowledge and intent is adequate Rule 9. *Caliber Partners, ltd. v. Affeld,* 583 F.Supp. 1308 (1984).

108. The Plaintiff request the awarding attorney fees and costs associated with this action.

COUNT II

BREACH OF COVENANT TO REPAIR
FAILURE TO PROVIDE MAINTENANCE OF PREMISES

109. Plaintiff incorporates Paragraphs 6 through 108 of this Complaint as if set forth in full.

110. Under the United States Housing Act it has been found:

> . . . no person shall rent or offer to rent any habitation unless habitation and its furnishings are in clean, safe and sanitary condition, an obligation is placed upon landlord to put premises in a safe condition prior to their rental.

United States Housing Act of 1937, § 1 as amended 42 USCA § 1441; also see *Whetzel v. Jess Fisher Management Co.,* 282 F.2d 943.

111. However, the Defendants insist on collecting rent on the Apartment leased to Plaintiff with knowledge that it does not meet the requirements of the United States Housing Act. Moreover, statutes, codes and ordinances of the City of Covington, Kentucky. Neither was the apartment to be rented to the Plaintiff until met housing requirements mandated by law.

112. Under the provisions of 383.590 and 383.595 of the Kentucky Uniform Residential Landlord and Tenant Act, Defendants were required to put the premises in a condition fit for human occupation before renting the Apartment and repair all subsequent dilapidations, other than those caused by the tenant's want of ordinary care, that rendered the premises untenantable.

113. Pursuant to 383.595 (Landlord's Maintenance Obligations and Agreements) of the Kentucky's Uniform Residential Landlord and Tenant Act, Defendants shall:

> . . . (a) Comply with the requirements of applicable building and housing codes materially affecting the health and safety; (b) Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition; . . .(d) Maintain in good and safe working order and condition all electrical,

> plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him. . .

See **Exhibit F.**

114. At the time Defendants rented the premises to Plaintiff, Defendants owned and had the duty to maintain and repair the Apartment; however, failed to maintain and make the necessary repairs, thus causing the Apartment to be unfit for human occupation, in that the premises substantially failed to comply with those applicable building/housing code standards that materially affect the health and safety of the Plaintiff/tenant.

115. Specifically, as a proximate result of Defendants' failure to maintain and repair the Apartment/premises, at the time Plaintiff took possession, were uninhabitable and unfit for human occupation in that, among other things, there was mold found on the ceiling, receptacle missing from outlet, defective smoke detector, the carpeting and flooring beneath the carpeting was infested with urine and specimen stains causing it to soak and sink into the padding and wooding underneath. None of these types of stains were made known to the Plaintiff although she inquired prior to leasing and was advised by Defendant Martin that such stains did not exist.

116. From the time the Plaintiff moved into the Apartment/premises, Plaintiff became increasingly aware of the numerous defective, dangerous, unsafe, unsanitary and hazardous, etc. conditions of the Apartment/premises described above, and others, including but not limited to those noted in her correspondences of October 12 and 15, 2006, notifying Defendants of such concerns.

117. Commencing on or about October 12, 2006 and continuing through November 15, 2006, Plaintiff repeatedly notified Defendants, both verbally and/or in writing, of the defective, dangerous and unsafe/unhealthy conditions of the Apartment/premises and requested that Defendants have them repaired; however, Defendants failed and refused, and continues to fail and refuse to repair them, or any of them in *good faith*. Instead, Defendants have attempted to burden the Plaintiff and subject her to unlawful and illegal practices outlawed years ago in the state of Kentucky.

118. As a proximate result of Defendants' failure to repair the defective, dangerous, unsafe/unhealthy conditions or to have them repaired within a reasonable time, or at all, as alleged above, and in good faith, the Plaintiff has suffered and continues to suffer emotional and physical distress, all to Plaintiff's general damage in the amount in excess of the sum of $58,000.00, with charges accruing at $1,000.00 per day that the Plaintiff is required to continue to live under such conditions and not have full access and use of the Apartment, or an amount to be determined by the Court.

119. As a further proximate result of Defendants' failure to repair the defective, dangerous, unsafe/unhealthy conditions or to have the repaired within a reasonable time, or at all as alleged above and in good faith, the Plaintiff has been reduced to living most of her time in one portion of the Apartment in her efforts to reduce further *nausea* (in that she is affected by such conditions) and further exposure to areas heavily contaminated by the infestation and unhealthy/unsafe conditions reported above. All to Plaintiff's further damage of Defendants' wilful and unlawful behavior supporting further damages in the approximate amount of $145,000.00 - with charges accruing at $2,500.00 per day that Plaintiff is required to continue to live under such conditions which has begun to affect her, or an amount to be determined by the Court.

120. Defendants failure to put the Apartment/premises into a condition fit for human occupation at the time of renting to the Plaintiff and Defendants' failure to repair the defective and

dangerous conditions or to have them repaired within a reasonable time and in good faith after the Plaintiff timely, properly and adequately notified Defendants of them, or at all, as alleged above, were oppressive and malicious within the meaning of 383.705 of the Kentucky Uniform Residential Landlord and Tenant Act and other applicable laws governing contracts, *in that said actions by Defendants have subjected the Plaintiff to cruel and unjust hardship in wilful and conscious disregard of Plaintiff's rights and safety, entitling Plaintiff to an award of punitive damages.*

121. As a direct and proximate result of the breach of the covenant to repair of the lease by Defendants in their failing to maintain the premises/Apartment in a safe and healthy condition, Plaintiff is subjected to having to reduce and/or confine frequent use of her Apartment to the master bedroom. Efforts taken by the Plaintiff to lessen the exposure to the unhealthy living conditions created and/or allowed by the Defendants. Moreover, an effort to eliminate the *nausea* the Plaintiff experiences due to such unhealthy conditions.

122. Defendant Martin asserts that he advised the Plaintiff that, "I told you at that time, we would be happy to have new carpet installed, BUT NOT AT THE EXISTING RENTAL RATE! You then told me you wanted the cheaper rate, and you could get area rugs and throw rugs.."

123. The statement provided by Defendant Martin is false, pretextual and made in an effort to cover-up/mask/shield an illegal animus. He represented to the Plaintiff that the carpeting was only two (2) years old, that no pets/animals had ever been kept in the Apartment, stains were due to plant being kept, prior tenant had a pool table, and led the Plaintiff to believe (based on such representations) that the carpeting in the Apartment could be cleaned. The Plaintiff requested to have the carpeting cleaned in an good faith and was by no means trying to burden the Defendants with needless expenses. The Plaintiff offered to use area rugs; however this was before she actually knew the *true* facts surrounding the age of carpeting and true facts about the origins and/or types of staining in the carpeting. Had the Plaintiff known the true facts about the carpeting, no such offers would have been made.

124. The fraudulent representations by Defendant Martin is a *classic* example of what the law define in its definitions of fraud/misrepresentation – "*A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. . .*" See definitions above at COUNT I – Fraud/Misrepresentations of this Complaint.

125. Plaintiff believes the actions by Defendant Martin on behalf of Defendants was done repeatedly and that he used such fraudulent practices to injure tenants, such as Plaintiff, and to have them evicted when they submitted complaints about the conditions of the Apartment and requested that repairs be made to correct the defects and/or concerns addressed.

126. Defendant Martin made no such offer to the Plaintiff prior to her signing of the lease agreement and only asserts such in an effort to cover-up and/or mask unlawful and/or illegal actions of the Defendants.

127. Plaintiff would not have agreed to such offer to replace the carpeting and an increasing of rent if made (when it was not) by Defendant Martin because it *is not* in compliance with the laws and/or is prohibited by laws. The replacement of carpeting by Defendants is within their duties. Neither was it the duty of Plaintiff to pay the expenses associated with the replacement of carpeting through a rent increase, when damage to carpeting was not due to the Plaintiff's negligence and/or acts.

128. The Plaintiff believes that documentation in the possession of the Defendants will reflect how they have used such unlawful practices to injure previous tenants; therefore, she requested

documentation from the Defendants on October 24, 2006, wherein they have refused to produce. Documentation the Plaintiff is entitled to as a matter of law.

129. Defendant Martin's *pretext* offer was presented in an effort to extort additional monies from the Plaintiff. Monies the Defendants are aware by law they are not entitled to.

130. The Plaintiff believes that the Defendants knowingly and or should have known that they were renting the Apartment excessively above the rental value of the property permitted by law. Plaintiff has requested from Defendants information as to the value of the premises/Apartment; however, to date, has not received the information from the Defendants wherein she is entitled to as a matter of law.

131. Plaintiff believes the Defendants have made it a common practice to overcharge tenants, such as Plaintiff, in rent through inflation of rent which exceeds the market rental value permitted by laws. In an effort to shield/mask and illegal animus, the Defendants stooped to threatening the Plaintiff and trying to force her out of the Apartment with such threats. As recent as November 17, 2006, the Defendant has contacted an attorney to aid them in their unlawful endeavors.

132. The reasonable rental value of the premises as they actually exist in their defective and dangerous conditions is no more than $0.00 per month that the Plaintiff has occupied the premises.

133. As a proximate result of Defendants' breach of implied warranty of habitability and Defendants' breach of the covenant to repair the defective and dangerous conditions or to have them repaired in a reasonable time or at all, Plaintiff has sustained general damages (to date) which is to be determined by the Court – such damages representing the difference between the actual rent paid and the reasonable rental value of the premises. At the present time, the Plaintiff cannot determine said damage in that Defendants have refused to provide this information. The Plaintiff has timely requested the applicable documentation from the Defendants to determine such damages. However, Defendants have elected to violate the laws governing such matters.

134. As a further proximate result of Defendants' breach of Defendants' implied warranty of habitability and Defendants' failure to repair the defective, dangerous, unsafe and unhealthy/unsanitary conditions or to have them repaired within a reasonable time or at all, Plaintiff is suffering discomfort, annoyance, threats from Defendants and lawyer, and distress, all to Plaintiff's general damage at the present time in the excess of the sum of $29,000.00, with charges accruing at $500 per day that the Plaintiff is required to continue to live under such conditions and not have full access and use of the Apartment, or an amount to be determined by the Court.

135. The Plaintiff cannot afford hotel or similar accommodations. Therefore, she has closed off the room in which there is mold growth and taken extra precautions to cover infected carpeting in the master bedroom as much as possible. While she is still exposed to such unhealthy conditions and nuisance, she has done what she believes is reasonable to elevate further damage to herself.

136. Pursuant to 383.595 of the Kentucky Uniform Residential Landlord/Tenant Act, if provides that the landlord is to:

> a) adhere to all building and housing codes that affect *health* and *safety*. Such codes include any laws or regulations pertaining to the *habitability*, *construction*, *maintenance*, *occupancy*, *use*, or ***appearance*** of the dwelling unit; and b) make all repairs and *do whatever is necessary to put and maintain the premises in a fit and habitable condition*.

Italics, boldface and underline added for emphasis. See **Exhibit F** attached hereto and incorporated herein by reference and made a part of this pleading.

137. Defendants have breached the lease and covenant to repair by failing to comply with all requirements of municipal, state and federal authorities, and by failing to observe all municipal ordinances and state and federal statutes.

138. The Plaintiff has duly performed all obligations, conditions, and covenants required by the Plaintiff by the lease agreement.

139. The Plaintiff request the awarding attorney fees and costs associated with this action.

COUNT III
BREACH OF COVENANT TO REPAIR
FAILURE IN MAINTENANCE OF NUISANCE

140. Plaintiff incorporates Paragraphs 6 through 139 of the Complaint if set forth in full.

141. ARTICLE V: TENANT RESPONSIBILITIES of the Lease Agreement clearly states, "**NO PETS** OF ANY NATURE ARE PERMITTED WITHOUT WRITTEN APPROVAL FROM THE LANDLORD." However, the Defendants allowed previous tenant(s) leasing the premises/Apartment rented to Plaintiff to have pet(s)/animal(s) in the Apartment and/or dwelling. See **Exhibit A.**

142. ARTICLE VII: ABANDONMENT OF PREMISES of the Lease Agreement also represents that Defendants upon the vacancy of tenants will return/restore the Apartment to the condition at the time it was rented. See **Exhibit A.** However, the Defendants failed to return/restore the Apartment to the condition it was rented in after the previous tenants left. Instead, Defendants continued to allow the premises to go in disrepair and then sought to bring actions against tenants to have them evicted as a result of complaints submitted, rather than correct the defective conditions.

143. **Nuisance** is defined as: **a)** A condition, activity, or situation (such as a loud noise or **foul odor**) that interferes with the use or ***enjoyment of property***; and **b)** Loosely, an act or failure to act resulting in an **interference** with the *use or enjoyment* of property. (Boldface, italics and underline added for emphasis). See *Black's Law Dictionary*, Eighth.

144. The defective and dangerous conditions of the premises as alleged in the Complaint constituted a nuisance within the meaning of 383.595 of the Kentucky Uniform Residential Landlord and Tenant Act, in that they deprived the Plaintiff of *safe, healthy* and *comfortable* use of the Apartment/premises.

145. In October 12, 2006 correspondence, the Plaintiff advised Defendants:

> On last evening while in the living room, I noticed an odor (which to me smelled like urine). Because of such concerns, I will definitely be requesting an opinion as to the carpeting in the present condition, it is badly stained/dirty, holds odor, and well worn. In the present condition of the carpet, I find it rather embarrassing to invite family and friends over.

> If the carpet cannot be cleaned and stains and odor cannot be removed, I will of course want to have the carpet replaced. However, only wanting to replace needed carpeting (right now it looks like this would be in the living room, dining room and hallway). If this is the case, I will have to get an estimate of the cost associated with replacement.
>
> What I need to know from you Gary/GMM Properties, is how is the expense incurred for the cleaning and/or replacement of the carpet in my apartment to be handled? Do I pay for the cleaning and/or replacement of carpet and provide GMM Properties with the receipt of the expenses incurred for reimbursement?

146. As a direct and proximate result of Defendants allowance of pets/animals in the premises/Apartment by previous tenants, and leased to the Plaintiff, the carpeting has become soiled and/or stained with urine and other unknown specimen and holds unbearable odors from such.

147. The law is clear on such matters:

> *Odor of Cat Urine:* The odor of cat urine in one-family residence, which permeated the premises and was stronger in certain areas than others, breached the statutory provision, and resulted in a default in the landlord's warranty of habitability, in that continued habitation of the premises was thereby rendered detrimental to the health and safety of the occupants. CJS Landlord and Tenant § 673 – Statutory Warranty of Habitability. Also see, *Kekllas v. Saddy,* 88 Misc. 2d 1042, 389 N.Y.S.2d 756 (1976)).

See the *Memorandum of Points and Authorities* and arguments of said pleading filed in this action in support of *Notice-Motion for Order to Deposit Money in Court* in this action at Exhibit "D."

148. Such damage to the carpeting in the Apartment is awful, unacceptable in appearances, and very embarrassing. Moreover, additional damage (i.e. mold, dirty stove, rotting/decay of cupboard, etc.) Wherein, creating a nuisance to the Plaintiff. The Defendants have been aware of such nuisances reported by the Plaintiff for quite some time. However, has done nothing to correct them in good faith and/or without the enforcement by government authority.

149. Defendants have breached the lease and covenant to repair by committing a nuisance and/or allowing a nuisance to continue in Plaintiff's premises/Apartment. Such nuisance has prevented the Plaintiff from using the second bedroom (due to mold accumulation) on the ceiling, rotten and decaying cupboard underneath the kitchen sink which still evidences leakage, carpeting wherein urine and other specimen/stains have been allowed to manifest and remain creating heavily stained/damaged carpeting and projects very foul and offensive odors as well as create an offensive appearance and odor to the senses, obstructing and prohibiting the free use of these areas in Plaintiff's Apartment and therefore, interferes with her comfortable enjoyment of the Apartment.

150. In fact during their meeting on October 20, 2006, Defendant Martin advised the Plaintiff not to bother to move any furnishing in, in that she would not be there long and his intentions of bringing legal actions against her.

151. The Plaintiff knew that without the City of Covington's intervention, Defendants would not correct problems reported and or honor their obligations under the covenant to repair without her contacting the court(s). Plaintiff NOTIFYING the Defendants of her intent to bring legal actions due to the Defendants failure to comply with the laws governing said matters.

152. Commencing on or about October 12, 2006, and continuing through November 15, 2006, Plaintiff repeatedly notified Defendants, both orally and in writing, of the defective, dangerous, unsafe and unhealthy conditions of the Apartment/premises and requested that Defendants have them repaired, but Defendants failed and refused, and continues to fail and refuse to repair them, or any of them in good faith.

153. As a proximate result of Defendants' maintenance of the nuisance, Plaintiff suffered discomfort and annoyance, all to Plaintiff's general damage in an amount in excess of the sum of $29,000.00, with charges accruing at $500.00 per day that the Plaintiff is required to continue to live under such conditions and not have full access and use of the Apartment, or an amount to be determined by the Court.

154. In maintaining the nuisance, Defendants acted with full knowledge of the consequences and the damage being caused to Plaintiff. Despite this knowledge, Defendants failed to abate the nuisance by repairing the defective, dangerous, unsafe, unhealthy, etc. conditions of the premises or causing them to be repaired. Defendants failure to act in good faith and/or failure to act was both oppressive and malicious within the meaning of 383.705 of the Kentucky Uniform Residential Landlord and Tenant Act, in that it subjected the Plaintiff to cruel and unjust hardship in wilful and conscious disregard of Plaintiff's rights and safety, entitling the Plaintiff to an award of punitive damages. See **Exhibit F.**

155. Defendants' failure to put the Apartment/premises in a condition fit for human occupation at the time of renting it to Plaintiff and Defendants' failure to repair the defective, dangerous, unsafe/unhealthy conditions or to have them repaired within a reasonable time after the Plaintiff notified Defendants of them or at all, as alleged above, were oppressive, retaliatory and malicious within the meaning of 383.705 of the Act, in that they subjected Plaintiff to cruel and unjust hardship in wilful and conscious disregard of Plaintiff's rights and safety, entitling Plaintiff to an award of punitive damages.

156. ARTICLE VI: TERMINATION OF TENANCY of the Lease Agreement states, "IF SAID PREMISES ARE DESTROYED. . . OR OTHER CAUSE, WITHOUT ANY FAULT OR NEGLECT ON THE PART OF THE TENANT, SO AS TO BE UNFIT FOR OCCUPANCY, SAID TENANT SHALL NOT BE LIABLE TO PAY RENT FROM AND AFTER THAT TIME." However, the Defendants insist and have contacted an attorney (Bridges) to deceive and threaten the Plaintiff with eviction if she does pay rent – rent wherein Defendants are not entitled to as a matter of law - and or continue to require that the Plaintiff pay them rent for an inhabitable Apartment that has been cited by the City of Covington for Code Violations. See **Exhibits A** and **F** attached hereto and incorporated herein by reference and made a part of this pleading as well as photographs provided with the *Notice-Motion for Order to Deposit Money in Court* filed in this action.

157. Since leasing the Apartment, the Plaintiff has notified Defendant Martin of another tenant(s) violation of ARTICLE X: QUIET ENJOYMENT of the agreement. However, to date, Defendants allow the tenant to carry on night-after-night with blasting and/or high volume music which violates and interferes with "quiet enjoyment" and other code and ordinances of the City of Covington. Since Plaintiff's notification to Defendant Martin of the other tenant(s) nuisance, she has noticed that such actions have escalated.

158. ARTICLE X: QUIET ENJOYMENT of the Lease Agreement contains, "...SHALL HAVE THE PEACEFUL, QUIET ENJOYMENT AND POSSESSION OF THE LEASES PREMISES..." See **Exhibit A.**

159. ARTICLE V: TENANT RESPONSIBILITIES of the Lease Agreement contains, "INASMUCH AS NO TENANT SHALL BOTHER, HARASS, THREATEN, OR IN ANY OTHER WAY DISTURB ANY OTHER TENANT. THIS WILL INCLUDE BUT IS NOT LIMITED TO, WILD OR LOUD PARTIES, MUSIC, SLAMMING OF DOORS, CARS, ETC. THIS ACTION IS GROUNDS FOR IMMEDIATE REMOVAL OF TENANT FROM PREMISES." However, as with other breaches, this is what Defendants allow to take place in the dwelling and/or Apartment building. See **Exhibit A.**

160. The Plaintiff request the awarding attorney fees and costs associated with this action.

COUNT IV
OBSTRUCTION OF JUSTICE

161. Plaintiff incorporates Paragraphs 6 through 160of the Complaint as if set forth in full.

162. Since Plaintiff's notification of the defects/repairs provided the Defendants, the Defendants have gone to great lengths to evade the law and obstruct justice in this matter.

163. The Defendants have been provided with "*Documentation Requests*" from the Plaintiff, documents that the Plaintiff is entitled to pursuant to 383.858 (Disclosure) and 383.580 (Security Deposit) of the Act; however, Defendants have refused to produce the documentation that the Plaintiff has requested in an effort to obstruct justice. The Defendants doing so with knowledge that they were notified and provided with statutes/laws supporting the Plaintiff's requests that she is entitled to documents.

164. To *evade* service of process and *obstruct justice* to keep the Plaintiff from knowing from what address the Defendants conduct business, the Defendants tampered and/or altered an official government document issued by the Code Enforcement Department *redacting* their address information provided on the Code Enforcement Department's notice of citation citing the Code violations.

165. Plaintiff was informed and believed, based upon that information and belief allege, that the premises in question, in fact, violated the Housing/Building Code at the various times Plaintiff entered into possession and as a result of which Defendant Landlord breached the implied warranties of repairs, habitability, quality, and fitness of the premises as residences, causing the Plaintiff the right to rescind the lease agreement and to deem the lease agreement void as against public policy and *resulting in an absence of obligation on the part of Plaintiff to either pay rent or continue to pay rent or utilities on the premises.*

166. The Defendants representations described above were made in reckless disregard of the truth in that Defendant(s) made the representations with knowledge that they were false and without any reasonable grounds to believe such representations were true.

167. The representations described above were made by the Defendant(s) and/or their representatives and was within the scope of their employment/duties.

168. Once the Defendants were notified of the defects/repairs of the Apartment, they began to mastermind, scheme, conspire and plot on how to obstruct justice and preclude the Plaintiff from obtaining the relief she sought through the complaints reported. Moreover, how they could continue to evade the laws in furtherance of their breach of the covenant to repair.

COUNT V
RETALIATION

169. Pursuant to 383.705 (Retaliatory Conduct) of the Kentucky Uniform Residential Landlord and Tenant Act the laws preclude retaliation:

> . . . a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after:
>
> > (1)(b) The tenant has complained to the landlord of a violation under KRS 383.595...

See **Exhibit F** attached hereto and incorporated herein by reference and made a part of this pleading.

170. On October 20, 2006, at the closing of meeting between Plaintiff and Defendant Martin, Defendant threatened the Plaintiff with legal actions. Such threat coming AFTER the Plaintiff complained of the conditions of the Apartment and requested to be reimbursed for the money for the carpet cleaning Defendant Martin advised her would be reimbursed.

171. On November 18, 2006, Plaintiff received a letter from an attorney (Bridges) Defendant Martin contacted. On behalf of Defendant Martin, Bridges returned the November 2006 rent, and again threatened the Plaintiff with eviction if full November rent payment was not received.

172. The threat (eviction notification) issued by Bridges on behalf of Defendant Martin coming **AFTER** receipt of notification and presentation of Plaintiff's DRAFT Complaint that she intends to file.

173. Defendants and Bridges having knowledge of Plaintiff's intent to file a Complaint in the applicable Court shortly after the November 21, 2006, deadline presented them in her November 15, 2006 correspondence.

174. The Plaintiff request the awarding attorney fees and costs associated with this action.

COUNT VI
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

175. Plaintiff incorporates Paragraphs 6 through 174 of the Complaint as set forth in full.

176. Defendants' failure to put the premises into a condition fit for human occupation before renting them to the Plaintiff, and Defendants' repeated failure to repair the defects or to have them repaired when requested by Plaintiff to do so or at all, as alleged in this Complaint, were knowing, intentional, and wilful and done with a reckless disregard to the probability of causing Plaintiff emotional distress.

177. As a proximate result of Defendants' conduct, as alleged in this complaint, Plaintiff suffered extreme mental anguish and emotional and physical distress, all to the Plaintiff's general damage, in an amount to be determined by the Court.

178. While the Plaintiff has done what she believes is necessary to reduce the affect the unsafe/unhealthy conditions resulting in nausea and other symptoms, it appears that if the symptoms continue, the Plaintiff will have to seek medical treatment, etc. as a further effort to eliminate the harm already caused by Defendants' failure to provide conditions fit for human occupation. Damages, at this time which cannot be determined until the Plaintiff seeks medical attention.

179. In failing to correct the defects within a reasonable time or at all despite the Plaintiff's *good faith* numerous requests that Defendants do so as alleged in Complaint, Defendants' conduct was malicious and oppressive, in that it was conduct carried on by Defendants' wilful and conscious disregard of Plaintiff's rights and safety, as well as subjected the Plaintiff to cruel and unjust hardship. Plaintiff is therefore entitled to recover punitive damages.

180. The most usual rule for assessing the tenant's damages for breach of the landlord's covenant to repair, where no special damages are sustained, is the difference between the rental value of the premises if kept in the condition of repair required by the landlord's covenant, and the rental value in the condition in which they actually are.

181. For breach of the landlord of his covenant to repair, the measure of damages is what the repairs would have cost if made by the tenant, or the loss of the use of the premises during the period required for making repairs, or the difference between the value of the use of the premises as they are, and their value as they ought to be under the contract to repair, and for consequential damages to chattels, caused by want of repair.

182. Punitive damages are only appropriate in the most egregious cases ***so as to discourage <u>similar</u>*** *conduct in the future* and should only be awarded in cases where the actions are extreme. Defendants knew and/or should have known that Defendant Martin deliberately and knowingly misrepresented the facts regarding Plaintiff's Apartment. Moreover, Plaintiff believes that the Defendants have used such unlawful practices in the past and have had tenants lose protected rights through such fraud as that perpetrated upon the Plaintiff by the Defendants.

183. The Defendants leased/rented the premises/Apartment to the Plaintiff with knowledge that it was not in full repair and deliberately, maliciously and wanton misrepresented the facts regarding the apartment for the purpose of inducing the Plaintiff into the lease agreement and with knowledge and/or should have known that such actions were illegal and/or unlawful as a matter of law. Actions by the Defendants were done to defraud the Plaintiff. Since Plaintiff's submittal of complaints regarding the premises/Apartment, Defendants have elected to retaliate against her and repeatedly threaten her with eviction rather than repair the premises/Apartment as required by law. Most recent threats of action coming through an attorney they contacted named Bridges.

184. The Plaintiff request the awarding attorney fees and costs associated with this action.

WHEREFORE PREMISES CONSIDERED, Plaintiff requests and prays for judgment of and against Defendants as follows:

<u>RELIEF SOUGHT</u>

1. This Court has before it Plaintiff's *Notice-Motion for Order to Deposit Money in Court* with supporting exhibits as well as the *Memorandum of Points and Authorities* in support f said Motion. That this Court determines and declares the requests and rights of Plaintiff and Defendants and if it finds that the Plaintiff's *Motion for Order to Deposit Money in Court* is well taken, hereby enters the applicable ruling to enforce the granting of same.

2. Relief sought through the forthcoming Plaintiff's *Motion for Injunction and Emergency Restraining Order*, if it finds that it is well taken and hereby enters the applicable ruling to enforce the granting of same.

3. That this Court determines and declares the requests and rights of Plaintiff and Defendants under the laws governing Landlord & Tenant matters, contract issues and other applicable laws and order that the Defendants release to the Plaintiff the documents requested by her in her October 24, 2006 correspondence, Requests for Documentation, wherein she is entitled as a matter of law. Said documentation is to be produced to the Plaintiff. If the Defendants fail to comply with the Order to be issued by this Court, sanctions in the amount of $150.00 per day is to be assessed against the Defendants and the applicable costs incurred in attorney fees and additional damage.

4. That this Court determines and declares the requests and rights of Plaintiff and Defendants under the laws governing Landlord & Tenant matters as well as other applicable laws governing same, and orders that an Escrow Account be established wherein money regarding the Plaintiff's rent payments will be retained in an Account set up by this Court pursuant to 383.645 of the Kentucky Uniform Residential Landlord and Tenant Act and/or any other applicable laws governing same. Any and all future rent payment by the Plaintiff will be placed into this account until the resolution of this matter, and upon the resolution of this case; this Court will determine the distribution of said monies. Plaintiff's deposit of rent payments into this account will serve and be acceptable notice to Defendants that rent is being paid. The Court will determine how distribution of monies is to be made.

5. That this Court determines and declares the requests and rights of Plaintiff and Defendants under the laws governing Landlord & Tenant matters as well as other applicable laws governing same, and orders that an INJUNCTION and TEMPORARY RESTRAINING ORDER against Defendants, its attorneys, employees or representatives be granted until the conclusion of this matter and/or lawsuit.

6. The Court determines and declares the requests and rights of Plaintiff and Defendants under the Lease Agreement as well as the applicable laws governing Landlord & Tenant as well as contract matter, fraud, etc., and so order that Defendants are to make the necessary repairs on the dates and times presented by the Plaintiff – i.e. between 4:00 p.m. and 6:00 p.m. Monday through Friday, on Saturday or Sunday; whichever is convenient for the Plaintiff to correct the unlawful wrongs rendered her. This Court find such ruling to be just considering the circumstances and evidence surrounding this case. This matter could not be resolved and the Defendant insisted making it difficult for the Plaintiff.

7. **Damages** is defined as: "money claimed by, or ordered to be paid to, a person as compensation for loss or injury. Sum of money which a person wronged is entitled to receive from the wrongdoer as compensation for the wrong." See *Black's Law Dictionary*, Eighth Edition.

8. **Exemplary damages** in the amount determined by the Court to be reasonable as authorized by law;

9. Exemplary damages;

10. **Actual Damages** is defined as: "an amount to a complainant to compensate for a proven injury or loss; damages that repay actual losses." See *Black's Law Dictionary*, Eighth Edition.

11. Actual damages;

12. **Compensatory Damages** is defined as: "damages sufficient to amount to indemnify the injured person for the loss suffered." See *Black's Law Dictionary*, Eighth Edition.

13. Compensatory damages;

14. **Discretionary Damages** is defined as: "damages (such as mental anguish or pain and suffering) that are not precisely measurable but are determined by the subjective judgment of a jury. See *Black's Law Dictionary*, Eighth Edition.

15. Discretionary damages;

16. **Foreseeable Damages** is defined as: "damages that a breaching party knew or should have known would result from a breach when the contract was made." See *Black's Law Dictionary*, Eighth Edition.

17. Foreseeable damages;

18. **Special Damages** is defined as: "1) damages that are alleged to have been sustained in the circumstances of a particular wrong; 2) to be awardable, special damages must be specifically claimed and proved." See *Black's Law Dictionary,* Eighth Edition.

19. Special damages, including *attorney fees* – Claims of attorney fees are items of special damage which must be specifically pleaded. *Western Cas. & Sur. Co. v. Southwestern Bell Tel. Co.*, 396 F.2d 351 (1968).

20. Plaintiff request reasonable attorney fees and cost associated with the litigation of this matter.

21. **Punitive Damages** is defined as: "damages awarded in addition to actual damages when the defendant acted with recklessness, malice, or deceit; specif., damages assessed by way of penalizing the wrongdoer or making an example of others." See *Black's Law Dictionary*, Eighth Edition.

22. Punitive damages;

23. The Court determines and declares the respective rights of Plaintiff and Defendants under the Lease Agreement as well as the applicable laws governing Landlord & Tenant matters and contract matters.

24. Pursuant to 383.625 (Noncompliance by landlord) the Kentucky Uniform Residential Landlord and Tenant Act provides:

> Except as provided in KRS 383.505 to 383.715, the tenant may recover damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement of KRS 383.595.

25. Pursuant to 383.640 (Wrongful Failure to Supply Essential Services) of the Kentucky Uniform Residential Landlord and Tenant Act, the Plaintiff may "*recover damages based upon the diminution of the fair rental value of the dwelling unit.*" Plaintiff may do so with violation are those related to KRS-383.625 (Noncompliance by Landlord) or KRS 383.635 (Remedies for Noncompliance that Affects Health and Safety). For rights to recovery under the applicable laws to do not give rise under this section until the Plaintiff has given notice to Defendant Landlord. See **Exhibit F** attached hereto and incorporated herein by reference a made a part of in this pleading. The Plaintiff has met said requirements and proper notices have been issued to Defendants.

26. Pursuant to KRS 383.655 (Tenant's Remedies for Unlawful Ouster, Exclusion or Diminution of Service) of the Kentucky Uniform Residential Landlord and Tenant Act, "*If the landlord **unlawfully** removes or excludes the tenant from the premises or willfully diminishes services to tenant. . . the tenant may recover possession or terminate the rental agreement **and**, ... recover an amount not more than three (3) months periodic rent and a reasonable attorney's fee. If the rental agreement is terminated, the landlord shall return all prepaid rent.*" See **Exhibit F** attached hereto and incorporated herein by reference a made a part of in this pleading.

27. Interest on the damages according to law;

28. Prejudgment interest;

29. Judgment of and against the Defendants in an amount demanded by the Plaintiff and/or to be determined by the Court to correct the wrongs rendered the Plaintiff.

30. Judgment against the Defendants to repair the Plaintiff's Apartment to bring it into compliance with the applicable codes, statutes and laws governing habitability, etc.; and

31. Such further relief as the Court deems necessary to deter future unlawful practices by the Defendants.

JURY DEMAND ON ISSUES SO TRIABLE.

Respectfully Submitted,

Denise Newsome 12/4/06

DENISE NEWSOME, Plaintiff
128 E. 5th Street, Apt. 5
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Phone: (513) 680-2922

VOGEL D. NEWSOME

Post Office Box 31265
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December 11, 2004

L. F. Sams, Jr.
Mitchell, McNutt & Sams, P.A.
Post Office Box 7120
Tupelo, Mississippi 38802-7120

RE: ***Retaliation - Unlawful/Wrongful Termination of Vogel Newsome***

Dear Mr. Sams:

I am in receipt of your letter dated December 10, 2004. This letter is basically being submitted in response to your letter to clear up some *distorted* facts you present in said letter in regards to my being represented by counsel.

Let me say that I *did not* advise you at the time of my termination that I was *represented* by counsel. Neither did I advise you that my counsel would be in contact with you. Like my annual Performance Review by MMS, it is apparent how MMS attempts to take information and distort it for unlawful means and purposes to suit them.

For clarification of the false information you provide in your December 10, 2004 letter, on Friday, December 3, 2004, at the time of my termination, you demanded that I give you the copy of the Mitchell McNutt & Sams, P.A. Employee Handbook that was mine. Although I objected to your request, I then provided you with the copy of the Employee Handbook and advised that any additional documentation that you and/or MMS seek from me would have to be sought through my attorney. You advised me after that comment to have my attorney contact you. You, having full knowledge, that I at no given time did I advise you that I am presently and/or currently represented by counsel.

Enough on the frivolous assertions made in the letter you have provided. You can address this matter with the appropriate agency(s). Because my *initial* Complaints with the Wage and Hour Division and OSHA are still pending, I believe you and/or MMS can address each of the issues raised in the Retaliation Complaint(s) that has been filed and/or will be filed with the appropriate agency(s). This particular incident you address in your December 10, 2004, has been addressed at ¶ 29 in a Retaliation Complaint I have filed with the United States Department of Labor – Wage and Hour Division. Said Department/Division should be contacting MMS shortly for its response. Therefore, if you have any recorded statements or evidence to support the assertion you make in your letter, you may present it at the time of the investigation.

I have advised the appropriate agency(s) that I intend and am requesting to be reinstated immediately. I have also shared with the Wage and Hour Division that I seek reinstatement immediately and I will proceed to bring legal action against MMS for its unlawful and/or wrongful termination of my employment for my reporting of violations which are *protected activities* through the appropriate avenues. But, first things first – getting my job back. A copy of excerpts from the *Handy Reference Guide to the Fair Labor Standards Act*, pp. 13 – 14 is attached hereto for your

EXHIBIT "11"

reference. I expect the WHD to enforce the FLSA and upon doing so, I intend to bring legal actions against MMS.

I will share with you at this time, that I have found your actions and the repeat unlawful violations rendered by MMS' employees against me - for the filing of my Complaints with the firm, WHD and OSHA - willful, malicious and wanton. Moreover, the most recent ones of December 3, 2004, being done to cause me embarrassment, humiliation, distress, hardship, injury/harm, etc. Therefore, I intend to seek recovery (the maximum allowed under law) for all damages/injuries I have sustained as a direct and proximate result of said violations permitted under law including punitive damages – which if allowed, for up to one-half the financial worth of MMS. I provide you with *some* information for your review, research and reference in support thereof:

CASE LAW:

Scribner v. Waffle House, Inc., 14 F.Supp. 2d 873 - **An employer is liable** under Title VII for the discriminatory acts of an employee if it **knew or should have known** *of the employee's offensive conduct and failed to take steps to repudiate that conduct and eliminate the hostile environment*. *Id.* at 883 citing *Nash v. Electrospace Sys., Inc.*, 9 F.3d 401, 404 (5th Cir. 1993)(citing *Jones v. Flagship*, 793 F.2d at 720)(As this Court noted in *Waltman v. International Paper Co.,* the type and extent of notice necessary to impose liability on an employer under Title VII are the subject of some uncertainty. 875 F.2d 468, 478 (5th Cir. 1989)(concluding that three separate complaints to higher management constituted sufficient notice.)).

Although it felt this was "undoubtedly a close question" in *Farpella-Crosby*, the Fifth Circuit held that plaintiff had met her burden of proving that Horizon Health Care "*knew or should have known*" that she was being subjected to a hostile work environment – primarily with evidence of Farpella-Crosby's *complaints to two of the company's "human resource directors."*

Specifically, Farpella-Crosby *testified that she frequently talked to Belinda Callejo about "her problems" with Jose Blanco,* ***telling the human resource director.***

The credibility of the witnesses issues is addressed in *Scribner* at 884-885.

To prove severe emotional distress, a plaintiff must show that she suffered "more than mere worry, anxiety, vexation, embarrassment, or anger. In making this determination, courts should consider ***"[t]he intensity and duration of the distress."*** *Scribner* at 932, 933 [*Behringer v. Behringer*, 884 S.W.2d 839, 844]

Also, "**the extreme and outrageous character of the defendant's conduct is in itself important evidence that the distress existed.**" A plaintiff **need not prove**, however, that her emotional distress had physical manifestations. *Villasenor v. Vallasenor*, 911 S.W. 2d 411, 417.

Her *torment* continued almost unbroken *during her entire* Waffle House *employment. . .* **The harassment** of Scribner for this period ***was abusive*** and ***unrelenting***. Having observed her demeanor in testifying about the extreme humiliation, disgust, and despair she endured, the court is convinced that she suffered severe emotional distress. *Scribner* at 933.

Considering all of these circumstances, the court finds that Therese Scribner is entitled to recover $358,000 as mental anguish damages.

A party seeking punitive damages must establish either "actual malice" or that the defendant's acts were accompanied by fraud or other aggravating circumstances. Actual mailice, as distinguished from "legal malice" requires a showing of "ill-will, spite, evil motive or purposing the injury of another. *Scribner* at 933.

. . . As in other instances which require proof of the wrongdoer's state of mind, the requisite state of mind can properly be inferred from the acts and conduct of the wrongdoer. *Chandler State Bank v. Dorsey*, 797 F.2d at 237.

A plaintiff injured by defamation is entitled to recover (i) actual damages, including lost income and mental anguish, and (ii) punitive damages. *Scribner* at 935 referencing *Brown v. Petrolite Corp.*, 965 F.2d 38 (5th Cir. 1992)

PUNITIVE DAMAGES:

In *BMW of North America v. Gore*, 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996), the Supreme Court derived these principles from its earlier decision in *Halsip*[1] and *TXO*:[2]

Punitive damages may properly be imposed to further a States legitimate interests in punishing unlawful conduct and deterring its repetition . . . *Helsip*, 499 U.S., at 22, 111 S.Ct., at 1045-1046.

. . . Certainly, evidence that a defendant has repeatedly engaged in prohibited conduct while knowing or suspecting that it was unlawful would provide relevant support for an argument *that strong medicine is required to cure the* ***defendant's disrespect for the law*. . . Haslip*, 499 U.S., at 5, 111 S.Ct., at 1036, TXO, 509 U.S., at 453, 113 S.Ct. at 2717-2718 (116 S.Ct. at 1601).

DEFAMATION:[3]

Damages for defamation may be based on elements other than injury to one's reputation such as personal humiliation, embarrassment, and mental anguish and suffering.

MALICE: The intent, without justification or excuse, to commit a wrongful act. (2) Reckless disregard of the law or of a person's legal rights. (3) Ill will; wickedness of heart.

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[1] *Pacific Mutual Life Ins. Co. v. Haslip,* 499 U.S. 1, 111 S.Ct. 1032, 113 L.Ed.2d 1, 113 L.Ed.2d 1 (1991).

[2] *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 113 S.Ct. 2711, 125 L.Ed.2d 366 (1993).

[3] An example of such defamation can be found in MMS 11/15/04 Performance Review prepared by Robert T. Gordon, Jr.

ACTUAL MALICE: The deliberate intent to commit an injury, as evidenced by external circumstances – Also termed *express malice*, *malice in fact*. Cf. *implied malice*.

Damages Awarded in *Scribner*:

- $119,500 – mental anguish as actual damage for defamation
- $24,188 – Tortious interference
- 6.3M – Severe, pervasive harassment[4]
- $1,149,504 – Punitive damages for defamation and tortuous interference

Again, I will first be seeking reinstatement of employment with MMS as the law requires – **MMS still has an opportunity to correct the wrongful termination and have me reinstated immediately itself.** However, if MMS elects to do so without the assistance of the outside government agencies, MMS must keep in mind that I have every intention to move forward in seeking recovery for damages for the unlawful/wrongful termination. Believe the documents in MMS' possession will support just how severe, pervasive, unrelenting, etc. its harassment of me was. Moreover, that the actions by MMS was willful, malicious and wanton. MMS repeated discriminatory/retaliatory practices and its repeatedly subjecting me to a hostile work environment created by it in efforts to force me out of the workplace is unlawful – *MMS was timely, properly and duly notified of its unlawful/unethical practices, however elected not to do anything to correct them.* As a direct and proximate result of my reporting the unlawful/unethical practices, my employment with MMS has been terminated and I have been injured/harmed. It is clear from record evidence, that MMS ***clearly disrespects the law*** and/or ***thinks that it is above the law.***

Thank you for your time and consideration in this matter. Should you have further questions, comments and/or want to discuss this letter, please feel free to contact me.

Respectfully,

Vogel Newsome

Vogel Newsome
Post Office Box 31265
Jackson, Mississippi 39286
(601) 362-4910 or 885-9536

Enclosure

[4] Please see MMS Employee Handbook also. Supporting MMS was aware that conduct by its employees towards me was indeed harassment. Yet MMS did nothing to deter nor discourage the unlawful practices once reported. Instead, MMS continued to seek ways to force me out of the workplace. When all such efforts to force me out of the workplace, MMS wrongfully terminated my employment for reporting violations which are protected activities.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

VOGEL NEWSOME — PLAINTIFF

VS. — CIVIL ACTION NO. 3:07CV99-TSL-JCS

MELODY CREWS, ET AL — DEFENDANTS

ORDER

Before the court for consideration is plaintiff's "Objections to Magistrate's Order Executed on August 13, 2007; Motion to Vacate/Set Aside and/or Expunge said Order; Motion for Findings and Memorandum of Law in Support thereof; and Jury Trial Demand." Having reviewed the order of the United States Magistrate Judge and plaintiff's 34-page filing, the court concludes that plaintiff's appeal to this court is without merit and accordingly, the order of the United States Magistrate Judge is affirmed in all respects. Plaintiff shall have until December 3, 2007, within which to post a $1,000 bond and, as stated, all other provisions of the order are declared to be in effect.

ORDERED this the 13th day of November, 2007.

/S/ TOM S. LEE
UNITED STATES DISTRICT JUDGE

EXHIBIT "76"

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

VOGEL NEWSOME — PLAINTIFF

VERSUS — CIVIL ACTION NO. 3:07cv99-TSL-JCS

MELODY CREWS, ET AL. — DEFENDANT

ORDER OF RECUSAL

This cause is before the Court *sua sponte* for the undersigned to determine whether he should recuse himself in this matter. The undersigned feels compelled to recuse himself in the above styled and numbered cause of action because of a conflict of interest.

This case will now be assigned to United States Magistrate Judge Linda R. Anderson. The district judge will remain the same being United States District Judge Tom S. Lee. The case number will read 3:07cv99-TSL-LRA.

SO ORDERED, this the 5th day of September, 2007.

/s/ James C. Sumner

UNITED STATES MAGISTRATE JUDGE

EXHIBIT "75"

Judge Barnett's Motion Calendar

To set a case contact Angela Cook at 968-6647 or Sylvia Bennett at 968-6649
or by E-mail: Angela Cook Sylvia Bennett

Search by Date: 05/15/06 Go

Page 1

Date Time Duration Location	Case #	Type Call Order	Plantiff Attorney	Defendant Attorney	Cancellation CourtReporter Jury
5/18/2006 9:00 Jackson	251-04-6878	Motion to Quash 1	Tom Moore, Jr. John N. Satcher, II	Willard J. Hendry Matthew A. Taylor	 No No
5/18/2006 9:00 Jackson	251-05-3990	Motion to Compel 2	Susan Brinston- Bell Bill Waller, Sr.	Hinds Community College Edward J. Currie, Jr./Rebecca B. Cowan	 No No
5/18/2006 9:00 Jackson	251-01-5026	Def. Motion Strike/ Quash /to Set Aside/for Leave 3	Calvary Investments, LLC William C. Bell	Janice Sumler Sanders Charles Robb	Set per email Charles Robb 4/5/06. Yes No
5/18/2006 9:00 Jackson	251-05-672	Motion for Default Judgment 4	Healthcare Financial Services, LLC Robert W. Camp	George Ephfrom Pro Se	 No No
5/18/2006 9:00	251-05-5261	Motion for Default Judgment 5	Amsouth Bank Bob Camp	Robert L. Bonds Eric F. Fagan	Set per Vincent Cortesi 5/3/06. No No

EXHIBIT "H"

Jackson					
5/18/2006 9:00 Jackson	251-03-4319	Motion to Enforcement Settlement. 7	Mississippi Transportation Commission James H. Isonhood	Chasidity Hampton & Cliburn Tank Lines, Inc. Joe Deaton/Amanda Lingold	Cancelled 05/18/06 per Joe Deaton. Yes No
5/18/2006 9:00 Jackson	251-05-3313	Motion for Summary Judgment 8	The Hampton National Company Surety George Holmes	Rufus Keys, et al Pro Se	Set per email - G. Holmes 4/20/06. No No
5/18/2006 9:00 Jackson	251-05-3312	Motion for Summary Judgment 9	The Hampton National Company Surety George Holmes	William Ray and James Medders Pro Se	Set per email - G. Holmes 4/20/06. No No
5/18/2006 9:00 Jackson	251-06-614	Motion for Summary Judgment 10	The Hampton National Company Surety George Holmes	Lorrie Crawford and Eddie McFields Pro Se	Set per email - G. Holmes 4/20/06. No No
5/18/2006 9:00 Jackson	251-04-2391	Mot. to Compel Turnover of Garnishment of Proceeds 11	Advanced Recovery John S. Simpson	Theresa Young Pro Se	Cancelled 05/03/06 per Terri of McKay/Simpson. Yes No
5/18/2006 9:00 Jackson	251-06-905	Motions to Withdraw/Stay/ Dismiss 12	Vogel D. Newsome Brandon Dorsey	Spring Lake Apartments, LLC/Dial Equities, Inc./Lemody Crews Grover Clark	No No

					Monrow, III/Lanny R. Pace	
5/18/2006 9:00 Jackson	251-05-2465	Motion to Deem Admissions Admitted 13		Angela Martin Catouche J. Body	Parktowne Apartments Rebecca B. Cowan	Cancelled 05/17/06 per Myrna of Currie,Johnson's. No No
5/18/2006 9:00 Jackson	251-00-879	Motion to Set Aside Default Judgment 14		Healthcare Financial Services, LLC Brent S. Miller	Robert A. Anderson Kyle B. Ainsworth	No No
5/18/2006 9:00 Jackson	251-05-656	Motion to Set Aside 14		Amanda Ellzey Barry W. Howard	Alvin Hunley Katherine D. Bishop	Reset from 05/18/06 per attorneys. No No
5/18/2006 9:00 Jackson	251-06-1003	Motion for Summary Judgment 15		Fairway Lending Corporation Stephen E. Gardner	Janice Brown Pro Se	No No
5/18/2006 9:00 Jackson	251-05-4483	Motion to Compel Discovery 16		Lawrence K. Green Henry T. Coleman	Ron Chrisman d/b/a Triple C Auto Body Shop & Joe Doe Ramel Cotton	No No
5/18/2006 9:00 Jackson	251-05-4784	Motion to Strike Answer/Motion to Compel 17		Shannon Williams James N. Bullock	Robert R. Sperandero Kenneth R. Dreher	No No
5/18/2006 9:00 Jackson	251-06-1003	Motion for Summary Judgment 18		Fairway Lending Corporation Stephen Gardner	Janice Brown Pro Se	Cancelled 04/24/06 per Murry of Young Williams'. Yes

					No
5/18/2006 9:00 Jackson	251-05-5909	Judgment Debtor Examination 20	Donta Meeks J. Howard Thigpen	Charles Wells, Wells Detail #2, ABC Corporation & John Does A-G Pro Se	No No
5/18/2006 9:00 Jackson	251-01-5983	Motion to Stay Judgment/ Set Aside 21	Young Williams Henderson & Fuselier Stephen Gardner	Tina Moore Trent Walker	Set 5/9/06. Yes No
5/18/2006 9:00 Jackson	251-06-905	Motions to Strike/Dismiss/Injunction/Sanctions 23	Vogel D. Newsome Pro Se	Spring Lake Apartments, LLC, Dial Equities, Inc., Melody Crews William M. Dalehite, Jr./Clark Monroe	Yes No
5/18/2006 9:00 Jackson	251-06-1592	UNLAWFUL ENTRY AND DETAINER 24	Deutsche Bank National Trust as Trustee Andrew W. Impastato	Harold Heath Pro Se	Set @email Renee Sistrunk (Shapiro & Massey) 5/12. Yes No
6/1/2006 9:00 Jackson	251-05-5028	Pl. Mot. S/J; Def. S/J to Cross-Claim/ Mot. Strike 1	Progressive Gulf Insurance Company/ Tina S. Moore Bradley Kelly/ Ashley Ogden	Ella D. Brown Pat Catchings	Cancelled 01/31/06 per Bardley Kelly Yes No
6/1/2006 9:00 Jackson	251-04-2133	Motion to Hold Defendant in Contempt 2	Progressive Gulf Insurance Company Stephen Gardner	Mahsania C. Williams Pro Se	Set per Tammie 4/25/06. Yes No

6/1/2006 9:00 Jackson	251-05-5028	Motion for Summary Judgment & to Strike 3	Progressive Gulf Insurance as subrogee of Tina S. Moore Bradley S. Kelly	Ella D. Brown v. Tina S. Moore Pat A. Catchings/ Ashley Ogden	Cancelled 5/31/06 per Bradley Kelly. No No

Page 2

Home

Mississippi Defense Lawyers Association

Defending the future of Mississippi

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Bryant Dukes & Blakeslee, P.L.L.C.

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EXHIBIT "13"

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Beverly B. Dunn

BY U.S. MAIL & FACSIMILE: 601/354-6277

TO: Luther T. Brantley, III – Executive Director
Mississippi Commission on Judicial Performance
Post Office Box 22527 – Jackson, Mississippi 39225-2527
FROM: Vogel Newsome
DATE: April 20, 2006
RE: ***REQUEST FOR APPEAL; INFORMATION FOR APPEAL PURPOSES – Re: MCJP No. 2006-044***
NO PAGES: 2 (Including this page)

Mr. Brantley:

I am in receipt of your letter dated April 18, 2006, a copy of which is attached, in regards to the Mississippi Commission on Judicial Performance's (MCJP) findings in regards to the above referenced matter.

Please be advised that I am requesting that you advise me whether Appeals of the MCJP may be had. If so, please provide me with said information in that you failed to provide me with the applicable information to appeal decisions by the Commission. In that your April 18, 2006, letter is vague and fails to address the issues raised in the Complaint filed with the MCJP, I am requesting for Appeal purposes that you provide me with the following information:

1. The MCJP's findings as to each of the issues raised in my Complaint;

2. The evidence and legal conclusions/statutes the MCJP relied upon in reaching its decision – to rebut that presented with my Complaint;

3. The MCJP's findings in regards to whether there has been Judicial Abuse and Judicial Abuse of Discretion by Judge William Skinner; and

4. Copy of the MCJP's record/file regarding this matter.

I believe you will find that my request for this information is with in the laws governing said matters and appeals that one may desire to bring in the applicable Court or before the applicable Administrative body to challenge the MCJP's findings/decision. Moreover, the laws are clear that findings/decisions lacking evidence and facts to support the decision/findings may be **deemed** *arbitrary* and/or *capricious*. Also, there are concerns as to what information and concerns the MCJP relied upon to influence its decision and/or refusal to enforce the laws wherein they are governed. Therefore, I am needing this information should I decide to challenge the decision of the MCJP under the Administrative Procedure Act (APA) before the appropriate government body designed to review said decisions and/or any other applicable laws which govern said matters.

Your prompt response and attention to this matter is greatly appreciated. Should you have further questions, please do not hesitate to contact me.

Respectfully Submitted,

Vogel Newsome

Vogel Newsome
Post Office Box 31265
Jackson, Mississippi 39286
Phone: 601/885-9536

EXHIBIT "27"

MISSISSIPPI COMMISSION ON JUDICIAL PERFORMANCE
P.O. BOX 22527
JACKSON, MISSISSIPPI 39225-2527
TELEPHONE: (601) 359-1273
FAX: (601) 354-6277

April 18, 2006

Mr. Vogel D. Newsome
P.O. Box 31265
Jackson, MS 39286

Re: 2006-044

Dear Mr. Newsome:

The Mississippi Commission on Judicial Performance has completed its consideration of the above complaint and has determined that there is insufficient evidence of judicial misconduct, within the jurisdiction of the Commission, which would warrant further action by the Commission. The complaint has, therefore, been dismissed.

The Commission is not empowered to act as a court of review, to determine if a decision by a judge in an individual case is legally or factually correct, or to exercise any control over a judge regarding the performance of his duties within the proper exercise of his judicial conduct, within the jurisdiction of the Commission, as defined by the Constitution.

The Commission has determined that the substance of your complaint is addressed to the legal or factual merits of individual litigation and not to judicial misconduct within the Commission's jurisdiction. It is suggested that you explore the advisability of any appropriate legal remedy with your attorney.

Very truly yours,

Luther T. Brantley, III
Executive Director

LTB:rr

455 N. LAMAR STREET
BAREFIELD COMPLEX BUILDING
SUITE 201
JACKSON, MISSISSIPPI 39201

* * * COMMUNICATION RESULT REPORT (APR. 20. 2006 8:45AM) * * *

TTI PAGE KRUGER HOLLAND

FILE MODE	OPTION	ADDRESS (GROUP)	RESULT	PAGE
3846 MEMORY TX		96013546277	OK	3/3

REASON FOR ERROR
E-1) HANG UP OR LINE FAIL
E-2) BUSY
E-3) NO ANSWER
E-4) NO FACSIMILE CONNECTION

MISSISSIPPI COMMISSION ON JUDICIAL PERFORMANCE
P.O. BOX 22527
JACKSON, MISSISSIPPI 39225-2527
TELEPHONE: (601) 359-1273
FAX: (601) 354-6277

April 18, 2006

Mr. Vogel D. Newsome
P.O. Box 31265
Jackson, MS 39286

Re: 2006-044

Dear Mr. Newsome:

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The Commission has determined that the substance of your complaint is addressed to the legal or factual merits of individual litigation and not to judicial misconduct within the Commission's jurisdiction. It is suggested that you explore the advisability of any appropriate legal remedy with your attorney.

Very truly yours,

Luther T. Brantley, III
Executive Director

LTB:rr

455 N. LAMAR STREET
BAREFIELD COMPLEX BUILDING
SUITE 201
JACKSON, MISSISSIPPI 39201

EXHIBIT "26"

MISSISSIPPI COMMISSION ON JUDICIAL PERFORMANCE

P. O. Box 22527
JACKSON, MISSISSIPPI 39225-2527

TELEPHONE
(601)359-1273
FAX
(601)354-8277

PLEASE NOTE

In accordance with Section 177A of the Mississippi Constitution of 1890, all proceedings before the Mississippi Commission on Judicial Performance are confidential unless and until the Commission files a recommendation for discipline or retirement with the Mississippi Supreme Court. Confidentiality shall attach upon the filing of the complaint and shall include all records, files, and reports of the Commission.

I. **PERSON MAKING COMPLAINT:**

Name: Newsome (Last), Vogel (First), D. (Middle)

Address: P.O. Box 31265 (Street, No., Route), Jackson, MS (City), 39286 (Zip)

Telephone No.: 601-885-9536 (Area Code)

II. **PERSON AGAINST WHOM COMPLAINT IS MADE:**

Name: Skinner (Last), William (First), ("Bill") (Middle)

Address: Hinds County Justice Court - P.O. Box 3490 (Street, No., Route), Jackson, MS (City), 39207 (Zip)

Judicial Office Held: Justice Court Judge - Hinds County, MS

III. **ALLEGATIONS AND STATEMENT OF FACTS:**

Please state the facts and circumstances which you believe constitute judicial misconduct or disability. Include any details, names, dates, places, addresses, and telephone numbers which will assist the Commission in its evaluation and investigation of this complaint. Also include any documentation you may have.

(Enter Allegations and Statement of Facts) (1) Violations under the Code of Judicial Conduct; (2) Abuse of judicial powers; (3) Unlawful Judgment of Removal as a direct and proximate result of frivolous Complaint filed by Spring Lake Apartments; (4) Unlawful Warrant of Removal; (5) Summons to Tenant improperly served and Judge upheld improper service of summons; (6) Unlawful arrest -- Actions resulted from an unlawful ruling & Judgment entered by Judge Skinner

If additional space is required, continue on additional pages as needed and attach them to this complaint.

(Please See Attached Complaint Entitled "Complaint Against Honoral William Skinner Hinds County Justice Court Judge for Judicial Misconduct Abuse"

IV. I certify that the allegations and statements of fact set forth above are true and correct to the best of my knowledge, information and belief and are made of my own free will.

3/3/16 (Date)

Vogel D. Newsome (Complainant's Signature)

EXHIBIT "72"

FOR SUBMITTAL TO
MISSISSIPPI COMMISSION ON JUDICIAL PERFORMANCE

COMPLAINT AGAINST HONORABLE WILLIAM SKINNER,
HINDS COUNTY JUSTICE COURT JUDGE
FOR JUDICIAL MISCONDUCT/ABUSE

BY: Vogel Newsome
Post Office Box 31265
Jackson, Mississippi 39286
601/885-9536 (H)

I, Vogel Newsome (hereinafter "Newsome"), submit this my Complaint against the Honorable William Skinner, Justice Court Judge – Hinds County, Mississippi, for judicial misconduct and/or abuse to address the unethical and unlawful practices of Judge William Skinner (hereinafter "Judge Skinner") during his handling of a civil action in Justice Court styled: *Spring Lake Apartments v. Vogel Newsome*; Docket No. 2510, Book 530.

In the trial of this matter, the Defendant believes that Judge William Skinner, breached the Code of Judicial Conduct and other applicable laws addressing matters. In support of this Complaint and the relief sought herein, Newsome states the following:

1. On January 27, 2006, during the trial of this matter, Judge Skinner failed to uphold the integrity and independence of the judiciary. Said action breached CANON 1 of the Code of Judicial Conduct which states:

> CANON 1
> **A Judge Should Uphold the Integrity and Independence of the Judiciary**
>
> An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

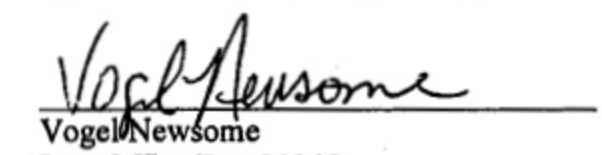
See **Exhibit "1"** – Mississippi Judicial College & Mississippi Law Research Institute HANDBOOK For MISSISSIPPI JUSTICE COURTS - attached hereto and incorporated as a part of this Complaint.

his actions were willful, malicious and wanton and/or total disregard for the laws and integrity of the Court and rights of citizens;

c) Any and all other relief the Commission deems appropriate given the facts of this matter.

RESPECTFULLY submitted this the **3rd** day of **March, 2006**.

VOGEL D. NEWSOME, Plaintiff



Vogel Newsome
Post Office Box 31265
Jackson, Mississippi 39286
Phone: 601/885-9536

MISSISSIPPI

Justice Court Guide

The Mayo Manual

Compiled 1976 [illegible] Mayo [illegible]

MISSISSIPPI

Justice Court Officers Association

EXHIBIT "69"

PROCESS

Service of process is an important part of a civil case, for improper service will cause the whole suit to be void, and consequently any judgment rendered cannot be enforced. Service of process is nothing more than the giving of notice to the defendant that he is being sued, and summoning him to answer by a certain time and place. The defendant usually answers the complaint by appearing in court and stating his case. A form for this summons is provided.

When to issue process. The summons should be issued after the person bringing the suit files the complaint with the justice court judge.

Who should serve the summons. The justice court judge would normally give the summons to a constable of his district to serve on the defendant. If a constable is not available in the justice's district, the sheriff of the county, or one of his deputies may execute the process for the justice court judge. In an emergency situation, when the constable, sheriff, or deputy cannot be found, the justice may appoint a reputable person to serve process. The justice may never serve his own process. If there are two constables and two justices in one district, either constable can serve process for either justice.

Where process may be served. The justice is limited to his own county when issuing process, unless there are several defendants. Therefore, the officer can serve the summons on a defendant if he can find the defendant anywhere in the county. If there are two defendants, one living in the justice's county, and the other living in another county, the justice is allowed to issue process for defendant living in the other county by mailing a copy of the summons to a proper officer of the other county requesting him to serve the summons. For example: Plaintiff sues John Doe and Richard Roe in a justice court in Beat 1 of Lafayette County. If John Doe lives in Beat 1 of Lafayette County, but works in Beat 2 of that county, the constable of Beat 1 can serve process on John Doe in either district, since the districts are in the same county. If Richard Roe lives in Beat 3 of Panola County, the justice may mail a copy of the summons to the constable of Beat 3 of Panola County and ask him to serve the summons on Richard Roe.

How to serve the summons. The justice court judge should direct the officer to serve the summons by the following method:

(1) If the defendant can be found within the county, he should be handed a copy of the summons.

(2) If the defendant cannot be found within the county, a copy of the summons may be left at the defendant's home with his wife or any member of his immediate family above the age of 16 who is willing to accept the summons.

(3) If the defendant cannot be found and no such member of his family is at the residence, the officer may post a copy of the summons at the defendant's residence.

The law requires that the officer first attempt to serve the summons personally upon the defendant, and *only if* the officer cannot serve the defendant personally, may he leave the summons with a member of the defendant's family. The law further states that the summons may be posted at the residence *only if* the defendant or some member of his family cannot be found. The justice must be satisfied that the summons has been served in one of these ways.

Return of the summons. After the officer serves the summons, he must return to the justice a written account of how he served the summons on the defendant. He may do this by filling out the form provided in this section. In this way, the justice can insure that process has been properly served.

When the defendant is required to answer. Normally the justice should require the defendant to answer the summons at the next term of court. However, there are certain rules the justice must follow in setting the date on which the defendant must answer (return date). These are set forth below:

(1) If after the summons has been issued, it is served personally at least five days before the date that the defendant is supposed to appear, it is considered to be a good service of process and the defendant must answer on that date.

(2) If the summons is served less than five days before the return day, the defendant will not be required to answer until the next term of court after the one that he is summoned to appear.,

Default judgment. If the defendant has been served at least five days before he is supposed to answer, but does not answer, on motion of the plaintiff, the justice may render a default judgment against him for the amount that the plaintiff claims. A default judgment, however, where there is less than five days notice, is no good and cannot be enforced against the defendant.

A summons returnable to a past day or one returnable to an impossible date, *i.e.* February 30, is void.

Waiver of process. The defendant may waive service of process if he wishes. He may do this by appearing himself or by having his attorney appear in court, or he may submit a written waiver that has been signed by two witnesses. The law requires that the defendant wait at least one day after the suit has been filed before he waives process or the waiver will be invalid.

THE UNIVERSITY OF MISSISSIPPI

Mississippi Judicial College

&

...ppi Law Research Institute

HANDBOOK

FOR

MISSISSIPPI JUSTICE COURTS

EXHIBIT "68"

Handbook
for
Mississippi Justice Courts

Original research and authorship by:
Richard L. Carlisle
MISSISSIPPI LAW RESEARCH INSTITUTE
The University of Mississippi School of Law
University, Mississippi 38677

Editing, supplemental authorship and publication by:
Catherine F. Case
Krista R. Johns
COURT EDUCATION PROGRAM
6th Floor, 3825 Ridgewood Road
Jackson, Mississippi 39211

The publishers of this handbook express their sincere thanks to the following people:

Ryan Hood
Special Assistant Attorney General
for his review of the handbook material and many contributions to it.

Larry Stroud
Special Assistant Attorney General
for authorship of the sections on Liens and Executions

Samuel C. Kelly
Ott & Purdy, Ltd.
for authorship of the section on Bad Check Law

Cynthia Lee Perry
Chief Assistant City Prosecutor, Jackson
for authorship of the section on DUI Law

Fall, 1989 Update

The *Handbook for Mississippi Justice Courts* was prepared by the Mississippi Law Research Institute to assist the Court Education Program in its task of providing continuing education and training to the Justice Court Judges and clerks in the State of Mississippi. The purpose of this work is to serve as a handbook and guide for quick reference by justice court personnel to assist in their daily tasks which are prescribed by the Mississippi Code and the Mississippi Supreme Court.

This handbook was prepared in conjunction with and reviewed by the Office of the Mississippi Attorney General. The Attorney General recommends its use by the Mississippi justice Court as a preliminary guide and source book. Since the laws of our state are subject to change and are interpreted daily by our courts, the Mississippi justice Court Judges are encouarged always to check the Mississippi Code for amendments and the reporters for the latest court decisions from the Mississippi Supreme Court.

Mike Moore

Attorney General
State of Mississippi

3.4 THE SUMMONS

A. Serve Five Days Before Court Date

Following the filing of a written statement of the claim of action and payment of the court cost, the clerk shall issue a summons for the defendant returnable to the next term of court of the justice court judge to which the case is assigned. A defendant must have been served for five days before his appearance day in court or he does not have to appear until the following term of court according to §11-9-105(3) of the Code. Any summons issued within five (5) days before a term of the court shall be made returnable to the next succeeding term.

B. How to Calculate Number of Days

"When process shall be required to be served or notice given any number of days, the day of serving the process or of giving the notice shall be excluded and the day of appearance included; . . . When the last day falls on Sunday, it shall be excluded; but in other cases Sunday shall be reckoned in the computation of time." §1-3-67 Miss. Code.

Based on the foregoing statutes, a justice court clerk should count the number of days before the next term of court excluding the day of the issuance of the summons, but counting the first day of the term of court, and if the number of days is less than five, make the summons returnable to the term of court which follows the next term. If the summons is issued which would allow for the five days service before the term, but does not get served five days before the term, the defendant does not have to appear until the term of court following the term stated in the summons.

C. Who May Serve Process

The sheriff of any county, and his deputies, shall execute any process directed to him by any clerk of the justice court; but process shall not be directed to the sheriff if there is a constable in the county duly qualified to act, unless there is in the opinion of the clerk, good reason. §11-9-107 Miss. Code.

In the case of emergency, and where a constable or sheriff or deputy sheriff cannot serve process in time, the clerk of the justice court may appoint some reputable person to execute any process. However, the clerk has no authorization to pay that person a fee for this service. The clerk will be liable on that person's bond for all damage which may result from appointment of an insolvent or incompetent person. §11-9-109 Miss. Code. Appointment of a private person to serv attachments or garnishments must be in writing.

Where a person has been appointed to serve process or seize prc perty in execution of process by the clerk, that person must retur the process and the property, when applicable, to the sheriff or cor stable. §11-9-111 Miss. Code. The sheriff or constable must return th process to the clerk of the justice court and deal with the propert as if he had seized it. Persons from whom property has been take must be at once informed who has the property. §§11-9-111, 113 Mis Code.

D. How Summons is Served

Section 13-3-33 of the Code prescribes the proper methods for ser ice of a summons from justice court:

1) Upon the defendant personally, if to be found in the county, b handing him an accurate copy of the process.

2) If the defendant cannot himself be found in the county, then b leaving an accurate copy of the process at his usual place of abod with his wife or some other person of his family above the age of si teen years, and willing to receive such copy.

3) If the defendant cannot himself be found, and if no person of h family aged sixteen years can be found at his usual place of abo who is willing to receive such copy, then by posting an accurate co on a door of the defendant's usual place of abode. However, this ty of service of summons is not permitted if the defendant lives in multi-dwelling.

There are several statutes which prescribe the method for servi special categories of defendants. These are found from §13-3-41 §13-3-63. Included within these statues are the methods for servi unmarried minors, corporations, persons of unsound mir nonresidents doing business in this state, nonresident motorist a others.

E. Return of Process

After the sheriff, or his deputy, or constable has served or attem ed to serve the summons, he must return it to the clerk of the just court. §11-9-113 Miss. Code. The proper form for the sheriff or c stable to use to show how the process was served is set out in §13-3 of the Code.

F. Waiver of Service of Summons

A defendant may waive the requirement of service of a summons on himself. He can enter his appearance in a case by executing a written waiver of service or by appearing in court. If the defendant executes a written waiver of process, the document must be signed after the date of the filing of suit and either 1) notarized or 2) the signature of the defendant may be proven by two subscribing witnesses before some officer authorized to administer oaths. Minors (unless they are married), lunatics or convicts of felony may not waive service of the summons. §13-3-71 Miss. Code.

3.5 TRANSFER OF CERTIFIED COPIES TO THE JUDGE

When the case has been recorded and assigned and process issued, the clerk shall, within two (2) working days, forward certified copies of all documents pertaining to the case to the justice court judge to which the case is assigned for further processing. §11-9-105(3) Miss. Code.

3.6 RESPONSIVE PLEADING BY THE DEFENDANT

If the defendant is merely denying liability to the plaintiff, there is no requirement that he file a pleading. He may simply appear at trial and give his testimony or other evidence in support of his position. However, if the defendant is claiming that the plaintiff owes money to him, and he wishes to raise this at trial as a set off against the money which the plaintiff is claiming, the defendant must, before the trial of the case, file with the clerk the evidence of debt, statement of account, or other written statement of the claim. If the defendant fails to do this, he shall not be permitted to use it at the trial §11-9-125 Miss. Code.

A. Filing Counterclaims

A counterclaim would involve a claim by the defendant for which the defendant seeks a judgment against the plaintiff. The court should require a filing of the evidence of debt, statement of account, or other written statement of the claim as with a claim for set off. The Office of the Mississippi Attorney General has issued an opinion dated March 7, 1980, that the justice court does not have authority to try a counterclaim in excess of the $1,000.00 jurisdictional limit and should dismiss such a counterclaim and hear the original claim only.

3.7 SETTING CASES FOR TRIAL

Section 11-9-105 of the Mississippi Code dictates that a summons be made returnable to the next term of court to the justice court judge to which the case is assigned, provided that there is enough time before the next term to allow for service to occur five days before the term. On the return date of the summons, the judge should hear and determine the case, if the parties appear. §11-9-127 Miss. Code. Civil cases are to be routinely tried at the next term of court at which the defe

BEFORE THE UNITED STATES DEPARTMENT OF LABOR
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
JACKSON, MISSISSIPPI DIVISION

VOGEL D. NEWSOME — COMPLAINANT

V. — CASE NO. _____

MITCHELL, MCNUTT & SAMS, P.A. — RESPONDENT

RETALIATION COMPLAINT
December 20, 2004

COMES NOW BEFORE THE United States Department of Labor, Equal Employment Opportunity Commission ("EEOC") – Jackson, Mississippi Office, Vogel Newsome ("Newsome) to submit for this, her Retaliation Complaint ("R. Complaint") pursuant to Title VII of the Civil Rights Act of 1964, and any and all applicable laws governing said matters, against her employer and/or former employer, Mitchell, McNutt & Sams, P.A. ("MMS"). In support of this instant R. Complaint, Newsome provides the following statements:

1.

Under Title VII of the Civil Rights Act of 1964, it is illegal to discriminate in any aspect of employment.

2.

Title VII of the Civil Rights Act of 1964, prohibits discriminatory practices under the laws for harassment based on race, color, religion, sex, national origin, disability, or age.

3.

Title VII of the Civil Rights Act of 1964, prohibits discriminatory practices under the laws for retaliation against an individual for participation in a statutorily protected activity, filing a charge for unlawful employment practices, participating in an investigation, or opposing discriminatory practices.

4.

Title VII of the Civil Rights Act of 1964, prohibits intentional discrimination.

5.

Title VII of the Civil Rights Act of 1964, prohibits harassment based on race. Prohibiting verbal and physical conduct which constitutes unlawful harassment if the conduct is intimidating, hostile, creates an offensive working environment or interferes with the individual's work performance.

EXHIBIT "67"

6.

Complainant, Vogel D. Newsome ("Newsome) is a female African-American and, therefore, a member of the *protected* group under Title VII of the Civil Rights Act of 1964.

7.

Newsome holds a B.S. Degree from Florida A & M University, located in Tallahassee, Florida.

8.

Newsome began temporary employment with Mitchell, McNutt & Sams, P.A. ("MMS") in September 2003. Newsome began permanent employment with Mitchell, McNutt & Sams, P.A. on or about October 6, 2003.

9.

It is unlawful for Mitchell, McNutt & Sams, P.A. ("MMS") to retaliate against Newsome because she has reported or notified MMS that she will be reporting its unlawful employment practices – statutorily protected participation.

10.

It is unlawful for MMS to retaliate against Newsome because of its *knowledge* of Newsome's participation in present, past or future activities *protected* under the law – her participation for filing charge of discrimination, her participating in an investigation, or opposing unlawful employment practices.

11.

On or about December 19, 2003, Newsome began sharing her concerns regarding possible unpaid overtime. Newsome requesting to be provided information regarding "total hours" in overtime she had been paid since September 30, 2003. Newsome requesting said information via email to Rosonna Taylor ("Rosonna") and cc'ing Jim Allen ("Allen"), Chief Operations Officer. See **Exhibit A** attached hereto. Rosonna assist Allen.

12.

On or about January 12, 2004, Newsome followed up her December 19, 2003, email to Rosonna and cc'ing again Allen, the Chief Operations Officer, in regards to unpaid overtime. *Newsome requesting to be paid for her unpaid overtime.* See **Exhibit B** attached hereto.

13.

On or about January 24, 2004, Newsome submitted an email to Allen, the Chief Operations Officer, with subject matter entitled, "CONFIDENTIAL – TIMECLOCK & CALCULATION OF PAY RATE." Newsome questioning her hourly pay rate, requesting how MMS determines her hourly pay rate and at what rate of pay has she been paid for each pay period beginning 10/06/03 to the present. On or about January 26, 2004, Allen advised Newsome in regards to her January 24, 2004 email, "I'll visit with you this week when I'm in Jackson. Thanks, Jim" See **Exhibit C** attached hereto.

7. applicable relief required by law to discourage and/or deter the continued unlawful discriminatory and/or retaliatory practices; and

8. any and all other recovery for damages allowed under the laws of the United States governing the unlawful practices and unlawful termination of Vogel Newsome.

Respectfully submitted,

Vogel Newsome

Vogel Newsome
Post Office Box 31265
Jackson, Mississippi 39286
Phone: 601/362-4910 or 601/885-9536

114.

MMS unlawful employment practices and unlawful termination of Newsome's employment was done with *malice*. Said actions by MMS being: (1) intentional, without justification or excuse, to commit a wrongful act; (2) in reckless disregard of the law or of Newsome's legal rights; and (3) ill will; *wickedness* of heart.[10]

CONCLUSION

Based upon the above and foregoing information, Newsome prays that Equal Employment Opportunity Commission investigate the unlawful practices of Mitchell, McNutt & Sams, P.A. and its employees If violations are found to have been rendered by MMS and its employees against Newsome, upon EEOC's findings, that said Agency enter the appropriate ruling to correct that wrong complained of herein and that the applicable judgment be entered by said Agency to deter future unlawful practices by MMS and its employees.

RELIEF SOUGHT

Pursuant to the Title VII of the Civil Rights Act of 1964 as well as § 1991 and any other applicable laws governing said matter, Newsome seeks the following relief:

1. *Immediate* reinstatement as required under the applicable laws governing said matters;

2. backpay, loss wages;

3. where violations are found, that the United States Department of Labor, EEOC recommend changes in MMS' employment practices to bring MMS in compliance with the laws governing said matters;

4. where *willful* violations of Title VII are found, that, if the law permits, that the EEOC bring the appropriate actions that will make Newsome "whole" again;

5. that if the EEOC's investigation yields findings that MMS' discriminating treatment of Newsome is intentional, that the laws enforcing compensatory and punitive damages be enforced;

6. that the Secretary of Labor obtain an injunction to restrain MMS or any person from violating Title VII;

---

[10] During Newsome's November 30, 2004 Review, she offered to Gordon and Allen that they take a mirror and look within themselves/their hearts.

BEFORE THE UNITED STATES DEPARTMENT OF LABOR
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
JACKSON, MISSISSIPPI DIVISION

VOGEL D. NEWSOME — COMPLAINANT

V. — CASE NO. _____

MITCHELL, MCNUTT & SAMS, P.A. — RESPONDENT

AMENDED

CHARGE OF DISCRIMINATON COMPLAINT

March 29, ~~2004~~ 2005 VSN

COMES NOW Complainant, Vogel Newsome ("Newsome") before the United States Department of Labor - Equal Employment Opportunity Commission ("EEOC"), Jackson Mississippi Office, to submit this, her Charge of Discrimination Complaint ("D. Complaint and/or Complaint") pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII"), Civil Rights Act of 1991, and any and all applicable laws governing said matters, against her former employer, Mitchell, McNutt & Sams, P.A. ("MMS"). Newsome believes that her job rights have been violated by MMS and therefore, files this Charge of Discrimination Complaint. Said Complaint is being filed via service by first-class mail through the United States Postal Service. In support of this instant D. Complaint, Newsome provides the following statements:

1.

The EEOC has jurisdiction over the subject Complaint pursuant to Title VII of the Civil Rights Act of 1964.

2.

Complainant's current contact information at the time of submittal is as follows:

Vogel Newsome
Post Office Box 31265
Jackson, Mississippi 39286
Phone: 601/885-9536 or 601/362-4910

3.

Additional evidence to support the allegations raised in this instant D. Complaint may be located in the record of the following:

a) Mitchell, McNutt & Sams, P.A.
105 South Front Street
Tupelo, Mississippi 38802
Contact Person: James T. Allen and/or L. F. Sams

EXHIBIT "66"

b) U. S. Department of Labor
Equal Employment Opportunity Commission
Jackson, Mississippi Office
CHARGE NO. 131-2005-01442

c) U. S. Department of Labor
Employment Standards Administration
Wage and Hour Division
61 Forsyth St. SW
Atlanta, Georgia 30303
CHARGE NO. 1387893 and/or any and all documents associated with matter before the Wage and Hour Division

d) Mississippi Department of Employment Security
Post Office Box 1699
Jackson, Mississippi 39215-1699
DOCKET NO. 00002-R-05-01
BRD. DOCKET NO. 00241-BR-05-01
Note: Documentation, testimony taken under oath during a hearing held before the MDES on or about January 26 and January 27, 2005, and in subsequent filings will produce evidence and legal conclusions to support this instant D. Complaint. Said hearing was recorded and in the record of the MDES. Newsome has had difficulty in obtain a transcript of the hearing because the MDES is refusing to produce a certified copy of the transcript to her. Newsome believes the MDES' refusal to produce the typewritten transcript is due to the fact that it will reveal unethical practices by the Referee and MMS' representatives. Perhaps the EEOC will be able to obtain a ***certified*** copy of the transcript of said hearing. Furthermore, Newsome has managed to obtain a copy of the hearing on CDs. **This matter is under appeal** So far the MDES is not cooperating.

e) U.S. Department of Labor
Occupational Safety & Health Administration
Jackson Area Office
3780 I-55 North, Suite 210
Jackson, Mississippi 39211-6323
INVESTIGATOR: Matthew Robinson. **This matter from my understanding is presently pending – under investigation.**

f) Newsome maintains evidence in her own records to substantiate this D. Complaint.

4.

During Newsome's employment with MMS, she was subjected to discriminatory treatment based on race/sex.

5.

During Newsome's employment with MMS, MMS discriminated against Newsome based or race/sex in regards to termination/firing.

6.

During Newsome's employment with MMS, MMS discriminated against Newsome based on race in regards to compensation – overtime work and merit raise increase.

7.

During Newsome's employment with MMS, MMS deprived Newsome the same opportunity to work overtime because of her race it afforded white employee because Newsome reported what she believed to be unlawful employment practices.

8.

During Newsome's employment with MMS, MMS deprived Newsome a merit raise increase based on her race although it afforded white employee merit raise increase because Newsome reported what she believed to be unlawful employment practices. MMS allowing merit raise increase for a white employee with a high degree of absences, etc.

9.

During Newsome's employment with MMS, MMS subjected her to unlawful employment *harassment* because of her race/sex.

10.

During Newsome's employment, MMS retaliated against her for reporting and/or complaining about what Newsome believed to be discriminatory treatment against her based on race/sex.

11.

During Newsome's employment with MMS, she reported and/or notified MMS of her concerns of being singled out and targeted for discriminatory treatment and/or harassment.

12.

During Newsome's employment with MMS, she notified MMS of concerns of white employee(s) being treated better and/or more favorably than herself.

13.

During Newsome's employment with MMS, she repeatedly notified MMS of what she believed were unlawful employment practices – including discrimination based on race/sex.

justification or excuse, to commit a wrongful act; (2) in reckless disregard of the law or of Newsome's legal rights; and (3) ill will; *wickedness* of heart.[9]

CONCLUSION

Based upon the above and foregoing information, Newsome prays that Equal Employment Opportunity Commission investigate the unlawful practices of Mitchell, McNutt & Sams, P.A. and its employees If violations are found to have been rendered by MMS and its employees against Newsome, upon EEOC's findings, that said Agency enter the appropriate ruling to correct that wrong complained of herein and that the applicable judgment be entered by said Agency to deter future unlawful practices by MMS and its employees.

RELIEF SOUGHT

Pursuant to the Title VII of the Civil Rights Act of 1964 as well as § 1991 and any other applicable laws governing said matter, Newsome seeks the following relief:

1. *Damage to deter future unlawful practices by MMS;*
2. backpay, loss wages;
3. where violations are found, that the United States Department of Labor, EEOC recommend changes in MMS' employment practices to bring MMS in compliance with the laws governing said matters;
4. where *willful* violations of Title VII are found, that, if the law permits, that the EEOC bring the appropriate actions that will make Newsome "whole" again;
5. that if the EEOC's investigation yields findings that MMS' discriminating treatment of Newsome is intentional, that the laws enforcing compensatory and punitive damages be enforced;
6. that the Secretary of Labor obtain an injunction to restrain MMS or any person from violating Title VII;
7. applicable relief required by law to discourage and/or deter the continued unlawful discriminatory and/or retaliatory practices; and

[9] During Newsome's November 30, 2004 Review, she offered to Gordon and Allen that they take a mirror and look within themselves/their hearts.

8. any and all other recovery for damages allowed under the laws of the United States governing the unlawful practices and unlawful termination of Vogel Newsome.

Respectfully submitted,

Vogel Newsome Revised 4/15/05
Amended
Vogel Newsome 3/29/05

Vogel Newsome
Post Office Box 31265
Jackson, Mississippi 39286
Phone: 601/362-4910 or 601/885-9536

VOGEL D. NEWSOME

Post Office Box 31265
Jackson, Mississippi 39286
Phone: 601/362-4910 or 601/885-9536

February 23, 2005

BY MAIL & FACSIMILE: 202/693-6111
The Honorable Elaine L. Chao
Secretary of Labor
United States Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

FACSIMILE: 404/893-4524
Connie J. Klipsch
Deputy Regional Administrator
United States Department of Labor
Wage and Hour Division
61 Forsyth Street SW – Room 7M40
Atlanta, Georgia 30303

RE: *Vogel D. Newsome v. Mitchell, McNutt & Sams, P.A.*
Relating to incident addressed in December 8, 2004 letter to Honorable Elaine L. Chao

Dear Ms. Chao and Ms. Klipsch:

Please be advised that I am in receipt of Connie J. Klipsch's letter dated February 17, 2005.

While I do not mean to sound condescending and/or rude, please be advised that I am *leery* and have had enough of the foolishness and frivolous responses/actions of the Wage and Hour Division's ("WHD") representatives – including both of you. If anything, you both should be embarrassed by the work product you and your agency representatives have put out; however, I am certain that you both are not. It is apparent that the WHD *attempts* to project ignorance in regards to the requests and notices that I have submitted; and have clearly ignored my repeat requests that it address **all** the issues raised in my COMPLAINTS/PLEADINGS – filed on or about April 15, 2004 and December 10, 2004.

THEREFORE PLEASE BE ADVISED that the WHD, its federal agents/employees and both of you have been timely, adequately and properly notified of such requests prior to my filing of a formal Complaint with the United States Department of Justice. Moreover, you both and the WHD representatives have been timely, properly and adequately notified of its unlawful practices and its failure to comply with laws governing said matters and to enforce said laws.

EXHIBIT "65"

PLEASE BE ADVISED, I cannot afford to allow the both of you and the WHD to continue to waste my time in this matter. ***It has been well over a year since*** I filed a formal Complaint with the WHD in regards to my former employer's, Mitchell, McNutt & Sams, P.A's, failure to compensate me and other salaried employees in compliance with the Fair Labor Standards Act ("FLSA"). Said Complaint was adequately, timely and properly submitted to the WHD.

THEREFORE PLEASE BE ADVISED, that I am requesting a **TRUE** and **CERTIFIED COPY** of the entire files for **each** of the Complaints – in ***association*** with the *Original* Complaint filed on or about February 11, 2004 and the *Retaliation* Complaint filed on or about December 10, 2004 - that I have submitted to WHD be forwarded to me no later than **MARCH 10, 2005**.

PLEASE BE ADVISED that I have begun drafting a *formal* Complaint to the United States Department of Justice in hopes of getting the issues the WHD and the both of you are trying to ignore and/or keep from answering addressed. Through the filing of my formal Complaint I believe based upon knowledge and/or information that I have obtained, the evidence will show the following:

1. **The WHD's failure to enforce the FLSA.** At the time the WHD submits a response to the Complaint I file with the United States Department of Justice, the WHD can then explain why it elected to *take a far departure* from the laws and its failure to enforce the FLSA when I submitted a valid Complaint to the WHD in regards to the unlawful employment practices of MMS. I will definitely be interested in ethnic make-up of individuals who have submitted Complaints to the WHD against employers who compensated its employees in the same manner as MMS and why when I submitted similar Complaints to WHD notifying of violations by MMS, why the WHD *took a far departure* from the laws and failed to enforce the FLSA and require that MMS comply with the laws governing said matters. As I shared with Ms. Chao, the advantage of working as a contract employee – one has the opportunity to work with various employers. In doing so, I have had the opportunity to work for employer(s) who have been found to be in violation of the Act. Yet, when I brought my Complaint(s) against MMS, the WHD *elected to look the other way*. I find the actions of the WHD to be discriminative and hope that the United States Department of Justice will be able to determine whether or not – in furtherance of the actions by the WHD – said actions are illegally motivated and the reasons behind such unlawful actions.

2. **How was I able to obtain testimony and evidence on January 26, 2005 and January 27, 2005,** to support the *Retaliation* Complaints submitted to federal agencies against MMS; yet federal agents/officers with the WHD that are supposed to be schooled and/or trained in the laws and able to obtain such information clearly failed to do so and/or falsified information to me in regards to

its findings that there was no evidence found to sustain the Complaints that I filed with the WHD. *InformationTestimony that I have been able to obtain was provided **under oath** by witnesses of MMS*. **Moreover, MMS was represented by counsel.**

PLEASE TAKE NOTICE, as I directed Ms. Chao where such evidence can be found, I will do likewise with the United States Department of Justice. Therefore, in answering the formal Complaint that I will be filing, the WHD can then explain why its agents/officers were unable to obtain this information and/or withheld pertinent information such as this from me – keeping in mind the WHD agent/officer(s) repeatedly refused to allow me to review and rebut the evidence it advised it relied upon. However, in my meeting of January 26, 2005 and January 27, 2005, because my rights under the United States Constitution **were not** deprived me *as the WHD deprived me of*, I was able to review evidence produced by MMS and cross-examine its witnesses to obtain the information that will support my Complaint and the unlawful actions of the WHD in its efforts to aid MMS in their unlawful employment practices. Yet the WHD was not competent and able – *so they want me to believe* – to obtain pertinent information the WHD having knowledge of is in the possession of MMS, yet did nothing to retain it and correct the wrongs complained of. Yes, something is definitely wrong with this picture and I am hoping that the United States Department of Justice will be able to resolve this matter and also determine whether ***criminal acts*** by federal agents/officers of the WHD are involved. There has to be a reason why the WHD failed to enforce the same laws under the FLSA that it has enforced on other employers who *were* practicing in the same manner as MMS. Yet the WHD did nothing to require that MMS comply with the same laws that it enforced on other employers.

Moreover, I was able to see and review evidence presented by MMS during a hearing held on January 26, 2005 and January 27, 2005, and reach a conclusion that MMS willfully, knowingly, and deliberately provided what it knew to be incomplete exhibits and/or false and misleading testimony in furtherance of their unlawful employment practices. MMS doing so for the purposes of delaying, hindering and obstructing the administration of justice. Therefore, I raising valid and reasonable concerns as to the credibility of the evidence the WHD relied upon in rendering its decision.

PLEASE TAKE NOTICE, if I as a citizen of the United States under cross-examination was able to obtain such information, where does that leave the agents/officers of the WHD who are supposed to be schooled/trained in such areas. MOREOVER, it explains why the WHD's agents/officers refused to allow me to see the information/evidence it relied upon to render its decision. The WHD having full knowledge that MMS was in violation of the laws, yet did nothing to correct such wrongs reported to it.

*No, instead the WHD and its representatives have attempted to do as many law firms do – make it appear that it is the Plaintiff and/or Complainant that is mentally unstable – because of the filing of **one or more** complaints and when it is unable to successfully defend a case. Rather than stick to the issues at hand and address same.*

3. **The motive behind why the WHD is attempting to force me to bring a *private* lawsuit** against MMS for unlawful employment practices under the FLSA when WHD has enforced the Act with other employers. While I believe I know the reasons behind the WHD's unlawful handling of my Complaints and its efforts to force me to bring a private lawsuit – **WHD actions being illegally motivated** – I would feel more comfortable if my beliefs are confirmed upon the completion of an investigation by the United States Department of Justice. Believe said agency will be able to smoke out the criminals and their illegal motives behind the actions of the agents/officers of the WHD after a complete and thorough investigation – moreover, when the agents/officers cannot explain the reason behind their actions.

DAMAGES: *Both of you and the WHD agents/officers have wasted enough of my time, have cost me to lose my job, suffer unlawful discriminatory and retaliatory practices, to be subjected to hostile treatment, and to suffer needless injuries and damages because of the WHD's failure to enforce the laws governing said matters and its failure to bring MMS in compliance with the laws as it required of other employers that were in violation of the FLSA.*

So that Ms. Klipsch does not attempt to try to claim ignorance as to my last request to Ms. Chao – as she attempts to do in her February 17, 2005 submittal in attaching my Notice of January 12, 2005 - I am attaching a copy of the February 7, 2005, submittal to Ms. Chao.

So that Ms. Chao does not attempt to try and claim ignorance of the February 7, 2005 submittal, I am attaching a copy hereto for easy reference and review and to support that the Department of Labor again was given ample notice. MOREOVER, what is it that Ms. Chao did not understand about my February 7, 2005 submittal? It clearly states that that she respond – "**NOT A REPRESENTATIVE, BUT MS. CHAO**." If the Secretary of Labor cannot comply with what I believe to be a simple request, it is no wonder the rest of the WHD's agents/officers act in such a manner.

THEREFORE PLEASE BE ADVISED, that I am demanding that a **CERTIFIED** COPY of the entire files associated with my Complaints be forwarded to me no later than **MARCH 10, 2005**, SO THAT I MAY PROCEED TO FILE MY COMPLAINT(S) WITH THE UNITED STATES DEPARTMENT OF JUSTICE AND ANY OTHER APPLICABLE LAW ENFORCEMENT AGENCY.

Respectfully submitted,

Vogel Newsome 7/23/05

Vogel Newsome
Post Office Box 31265
Jackson, Mississippi 39286
(601) 362-4910 or 885/9536

********** -IND. XMT JOURNAL- ********** DATE FEB-23-2005 ***** TIME 09:07 ********

DATE/TIME = FEB-23-2005 09:00

JOURNAL No. = 15

COMM.RESULT = OK

PAGE(S) = 016

DURATION = 00:06'49

FILE No. =

MODE = TRANSMISSION

DESTINATION = 914048934524

RECEIVED ID = / 4045622224

RESOLUTION = STD

********** - ***** - **********

********** -IND. XMT JOURNAL- ********** DATE FEB-23-2005 ***** TIME 08:59 *********

DATE/TIME = FEB-23-2005 08:52

JOURNAL No. = 14

COMM.RESULT = OK

PAGE(S) = 016

DURATION = 00:06'24

FILE No. =

MODE = TRANSMISSION

DESTINATION = 912026936111

RECEIVED ID = / 202 693 6111

RESOLUTION = STD

********** - ***** - **********

VOGEL D. NEWSOME

Post Office Box 31265
Jackson, Mississippi 39268
Phone: 601/362-4910 or 885-9536

March 22, 2004

BY MAIL & FACSIMILE: (601/965-5408)

Billy R. Jones, District Director
Jackson Area Office
U.S. Department of Labor
ESA Wage & Hour Division
McCoy Federal Building
100 West Capitol Street, Suite 608
Jackson, Mississippi 39269

Re: Vogel Newsome Complaint Submitted - February 11, 2004
Concerns Unpaid Wages & Earnings Due
Employer: Mitchell, McNutt & Sams, P.A.
Letter Requesting Reconsideration
Request for Certified Copy of Entire File

Dear Mr. Jones:

Enclosed is a DRAFT (without Exhibits) of the *Request for Review of March 19, 2004, Decision Rendered by the United States Department of Labor – Wage and Hour Division, Jackson, Mississippi Office* and *Notice to Challenge Agency Decision Under the Administrative Procedure Act.* I intend to submit a revised and final of this document to the Administrative Review Board in Washington, D.C. later this week. If you find any information contained therein to be inaccurate in regards to our conversation of March 19, 2004, please so advise.

Please note that although it appears from your agency's decision dated March 19, 2004, it is attempting to force me to bring legal action against my employer, Mitchell, McNutt & Sams, P.A., to correct the wrong your agency is mandated by law to correct, there are federal statutes/laws presently in place to afford citizens of the United States an opportunity to challenge the decision you submitted to me on behalf of the United States Department of Labor - Wage and Hour Division in the Jackson, Mississippi office.

Therefore, please accept this letter as my **FINAL NOTICE** to you and your agency affording it an opportunity to correct its error in the March 19, 2004 decision before my requesting a review of your agency's decision before the Administrative

EXHIBIT "64"

Review Board in Washington, D.c. Said notification is required to be given as a matter of law to afford your agency an opportunity to correct any and all wrongs rendered through your March 19, 2004 decision.

If the United States Department of Labor – Wage and Hour Division, Jackson, Mississippi Office is determined not to correct this wrong, *please provide me with a* ***certified copy*** *of your agency's entire file in regards to this matter.*

Thank you for your assistance in this matter. Should you have further questions or comments, please do not hesitate to contact me at the address above or 601/362-4910.

Sincerely,

Vogel Newsome

Vogel Newsome
601/362-4910

Enclosure

VOGEL D. NEWSOME

Post Office Box 31265
Jackson, Mississippi 39286
Phone: 601/885-9536 or 601/362-4910

September 23, 2004

[RESPONSE REQUESTED]

BY PRIORITY MAIL –Confirmation
Office of the Solicitor General
c/o Honorable Paul D. Clement
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

***BY PRIORITY MAIL –Confirmation**
Madonna Cynthia Douglass, Chair
Administrative Review Board
Room S-4309
200 Constitution Avenue, N.W.
Washington, D.C. 20210

***BY PRIORITY MAIL – Confirmation**
Tammy D. McCutchen, Administrator
Alfred Robinson, Acting Administrator
Wage and Hour Division
U.S. Department of Labor/ESA
Room S-3502
200 Constitution Avenue, NW
Washington, D.C. 20210

*Sent in same Priority Mail envelope with names highlighted to be distributed to proper department/individual(s)

RE: *ARB Case No. 04-082*
Newsome v. Mitchell, McNutt & Sams, P.A.

Request for Review of March 19, 2004, Decision Rendered by the United States Department of Labor – Wage and Hour Division, Jackson, Mississippi Office

Request for Department of Justice's Intervention/Participation in this Case

Dear Mr. Clement:

I am in receipt of The Administrative Review Board's ("ARB") Final Decision and Order entered on or about September 14, 2004, in this case. Enclosed, for your review, is a copy of same.

I am requesting your Agency's intervention/participation in this matter, in that I find that based upon the evidence in the record, federal officials' with the Wage and Hour Division ("WHD") and ARB actions may be unlawful. Moreover, done to obstruct justice, hinder the proceeding before it and deprive me rights secured under the United States Constitution and other laws governing said matters. Therefore, your agency's intervention/participation in this

EXHIBIT "5 of 3"

case is needed to insure that the proper laws are enforced and justice rendered to correct the wrongs and injustice complained of on this Appeal.

It is important to note that the ARB, first, attempted to assert that it did not have jurisdiction over matters requesting review of the United States Department of Labor – Wage and Hour Division, Jackson, Mississippi Office's decision entered on or about March 19, 2004. The ARB requested that I provide a response to its Order to Show Cause dated June 22, 2004, by July 6, 2004. I complied with said demands by the ARB and provided documentation to support the ARB's jurisdiction over this matter – in that the ARB attempted to mislead me and assert that under no circumstances did it have jurisdiction over this matter.

However, when such a frivolous argument by the ARB failed, on or about September 14, 2004, the ARB entered a Final Decision and Order advising the following:

> "In this case, Newsome appeals a decision issued by the Department of Labor's Wage and Hour Division. The Secretary of Labor has delegated authority to the ARB to review final decisions of the Administrator of the Wage and Hour Division or an approved agent of the Administrator[2]"

fn. 2 states:

> The Administrator of the Wage and Hour Division did not sign the letter of which Newsome seeks review, nor does the letter purport to be a final decision of the Administrator. Given our conclusion that the ARB does not have jurisdiction of this case in any event, it is not necessary for us to determine whether the letter was a final decision by an authorized agent of the Administrator.

Copy attached hereto at p. 2.

The conclusion of the ARB is vague and appears to lack substance to support it. So, I conclude, that the ARB is not exercising jurisdiction over this matter – based on a mere technicality (Administrator did not sign March 19, 2004, letter containing the WHD's decision). *Neither does the ARB make it clear whether or not the District Director – Billy R. Jones of the WHD, Jackson Mississippi Office – is an approved agent of the Administrator*. Even if such technicality had merits, the record evidence will support that the Administrator for the WHD – Tammy D. McCuthen ("McCuthen) – was timely, properly and adequately placed on notice and/or informed of the WHD's handling of this matter. A courtesy copy of the Request for Review dated April 15, 2004, was submitted to McCuthen. *Therefore, giving the Administrator/Acting Administrator of the WHD plenty of time to intervene and/or respond to this Appeal because* ***no*** *final decision has been entered. Thus, it is safe to conclude the* ***March 19, 2004, decision*** *by the WHD* ***is amendable***. Rather than create a trail of *bread crumbs* leading to this conclusion, all the ARB had to do was advise Newsome that the WHD has failed to comply with the laws governing said matters – when the WHD failed to enter a ***Final Decision***

in compliance with the laws. Moreover, as requested by Newsome, all the ARB had to do was forward information onto the Administrator/Acting Administrator for the WHD as requested by Newsome in her April 15, 2004, letter submitting Request for Review.

It is important to note that I submitted my *Request for Review of March 19, 2004, Decision Rendered by the United States Department of Labor – Wage and Hour Division, Jackson, Mississippi Office* ("Request for Review"), on or about **April 15, 2004**.

This matter has been before the United States Department of Labor since about **February 11, 2004**. *It is now September*, approximately ***seven*** months later, and neither the ARB or Wage and Hour Division's Administrator, Tammy D. McCuthen, have addressed the issues raised in my Request for Review dated April 15, 2004. It has almost been **a year** that my employer, Mitchell, McNutt & Sams, P.A. has not paid me in compliance with the FLSA.

You will see from the record evidence in the ARB's handling of this matter, that the following persons have been notified and/or are aware of this matter brought before the ARB by myself:

Steven J. Mandel, Esq.
Associate Solicitor
Division of Fair Labor Standards
U.S. Department of Labor
Room N-2716, FPB
200 Constitution Avenue, NW
Washington, DC 20210

Clyde Payne
U.S. Department of Labor
Occupational Safety & Health Administration
Jackson Area Office
3780 I-55 North, Suite 210
Jackson, MS 39211

Alfred Robinson
Acting Administrator
Wage and Hour Division
U.S. Department of Labor/ESA
200 Constitution Avenue, NW
Room S-3502
Washington, DC 20210

Billy R. Jones
District Director
Jackson Area Office
U.S. Department of Labor
ESA Wage & Hour Division
McCoy Federal Building
100 West Capitol Street, Suite 608
Jackson, MS 39269

Howard Radzely
Office of Solicitor
U.S. Department of Labor
200 Constitution Avenue, NW
Room S-2002
Washington, DC 20210

yet, to date, neither have come forth on its own to correct the wrongs and unlawful practices of Mitchell, McNutt & Sams, P.A.

Therefore, I am requesting that your Agency/Department get involved in this matter, and am requesting that your Agency/Department require the Administrator – Tammy D. McCuthen or Acting Administrator, Alfred Robinson –provide written responses to the Request for Review, and the 26 Issues raised therein, submitted to their Agency's attention via copy in April, 2004.

Mr. Clement, because of the procrastination and needless delay by the WHD and ARB, I hope you will agree ***that requesting*** *that the Administrator and/or Acting Administrator for the WHD produce* ***written responses to the Issues raised*** *in Request for Review and the Request for Review itself* ***by October 12, 2004****, is reasonable*.

There are approximately 26 numbered Issues raised in the Request for Review. Therefore, as a matter of law, I am requesting the Administrator/Acting Administrator for the Wage and Hour Division provide me with written responses to the Issues raised in my Request for Review and all supporting evidence the Administrator/Acting Administrator relied upon to derive their decision(s)/conclusion(s) on each. A COPY OF THE REQUEST FOR REVIEW (Brief Only)[1] is attached hereto for your reference.

I hope and believe that you will find that based upon the evidence in the record of the WHD, said agency has failed to follow its own procedures governing said matters. Therefore, said failure may be challenged under the Administrative Procedure Act. – See pp. 39 thru 42 of the Request for Review attached hereto.

Should you have further questions or comments, please do not hesitate to contact me.

Sincerely,

Vogel Newsome

Vogel Newsome
Post Office Box 31265
Jackson, Mississippi 39286
(601) 885-9536 or 362-4910

cc: Tammy D. McCuthen, Administrator - Wage and Hour Division (w/ encls.)
Billy R. Jones, District Director (w/ encls.)
Howard Radzely, Office of the Solicitor (w/o encls.)
Steven J. Mandel, Esq., Associate Solicitor (w/o encls.)
Clyde Payne (w/o encls.)
James T. Allen, COO, MMS (w/ encls.)

[1] If the Solicitor General's Office is requesting the exhibits as well, copies are in the record and possession of the ARB.

U.S. Department of Labor

Administrative Review Board
200 Constitution Avenue, N.W.
Washington, D.C. 20210

In the Matter of:

VOGEL D. NEWSOME, **ARB CASE NO. 04-082**

COMPLAINANT, **DATE:** SEP 14 2004

v.

MITCHELL, MCNUTT & SAMS, P.A.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearance:

For the Complainant:
Vogel D. Newsome, pro se, *Jackson, Mississippi*

FINAL DECISION AND ORDER

BACKGROUND

This case arises from a complaint filed by the Complainant, Vogel Newsome, against the Respondent, Mitchell, McNutt & Sams, P.A., for unpaid wages pursuant to the Fair Labor Standards Act (FLSA), 29 U.S.C.A. § 201 (West 1998). On March 19, 2004, the District Director of the Jackson, Mississippi office of the Department of Labor Wage and Hour Division issued a letter to the Complainant, notifying her that he found no violation of the FLSA and that the Wage and Hour Division would take no further action. On April 16, 2004, the Administrative Review Board (ARB) received a petition for review from the Complainant requesting the ARB to review the Wage and Hour Division's determination.

Because it did not appear from the face of the petition for review that the ARB had jurisdiction of the matter, the ARB ordered the Complainant to show cause why the petition for review should not be dismissed for lack of jurisdiction. The ARB stated, "To show cause, the Complainant must demonstrate how her petition for review is properly under this Board's jurisdiction to review decisions made by the Secretary of Labor's

Wage and Hour Division (or an authorized agent of the Administrator) under Section 4 of the Secretary's delegation of authority to the ARB."[1]

The Complainant filed a response to the Show Cause Order on July 7, 2004. For the following reasons we conclude that the ARB does not have jurisdiction to consider Newsome's petition for review.

DISCUSSION

The Secretary of Labor established the ARB to issue final decisions for the Secretary in cases arising under a limited number of specified statutory provisions. Secretary's Order 1-2002, 67 Fed. Reg. 64272 (Oct. 17, 2002). Accordingly, the ARB's jurisdiction to issue such decisions is limited to the statutory provisions specifically enumerated. In this case, Newsome appeals a decision issued by the Department of Labor's Wage and Hour Division. The Secretary of Labor has delegated authority to the ARB to review final decisions of the Administrator of the Wage and Hour Division or an approved agent of the Administrator[2] under:

> (1) The Davis-Bacon Act, as amended (40 U.S.C. 276a et seq.); any laws now existing or which may be subsequently enacted, providing for prevailing wages determined by the Secretary of Labor in accordance with or pursuant to the Davis-Bacon Act; the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) (except matters pertaining to safety); the Copeland Act (40 U.S.C. 276c); Reorganization Plan No. 14 of 1950; and 29 CFR parts 1, 3, 5, 6, subpart C and D.
>
> b. Final decisions of the Administrator of the Wage and Hour Division or an authorized representative of the Administrator, and from decisions of ALJ, arising under the McNamara-O'Hara Service Contract Act, as amended (41 U.S.C. 351); the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) (except matters pertaining to safety) where the contract is also subject to the McNamara-O'Hara Service Contract Act; and 29 CFR parts 4, 5, 6, subparts B, D, E.

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[1] See Secretary's Order 1-2002, Delegation of Authority and Assignment of Responsibility to the Administrative Review Board, 67 Fed. Reg. 64272 (Oct. 17, 2002).

[2] The Administrator of the Wage and Hour Division did not sign the letter of which Newsome seeks review, nor does the letter purport to be a final decision of the Administrator. Given our conclusion that the ARB does not have jurisdiction of this case in any event, it is not necessary for us to determine whether the letter was a final decision by an authorized agent of the Administrator.

Secretary's Order 1-2002, 67 Fed. Reg. 64272 (Oct. 17, 2002). Thus, the Secretary has delegated to the Board the jurisdiction to review final decisions of the Administrator of the Wage and Hour Division only in cases arising under the statutes specified and these specified statutes do not include the FLSA.

In support of her argument that the ARB has jurisdiction of her appeal, Newsome contends that the ARB's statement in the Order to Show Cause that its jurisdiction is limited to those statutes enumerated in the Secretary's Delegation of Authority is belied by information posted on the ARB's website that states, "the Secretary delegated directly to the Administrative Review Board the authority of the Secretary of Labor and other deciding officials to issue final agency decisions under a broad range of Federal labor laws." Response to Show Cause (Resp.) at 4. The two statements are not contradictory. The variety of the subject matters of the statutes under which the ARB issues decisions for the Secretary is indeed quite broad, including, for example, environmental, airline, nuclear energy, trucking and airline whistleblower protections, federal contracts for construction and services, child labor protection, migrant and seasonal worker protection and H-1B non-immigrant employee protections. However, the Board's jurisdiction is in fact "limited," in that the Board may only issue decisions for the Secretary as specified in the Secretary's delegation of authority to the Board.[3]

Newsome also argues that Section 4(c)(10)-(13) of the Secretary's Order delegates to the Board authority to review decisions in cases arising under specified sections of the FLSA and its regulations. However, even if Newsome's claim fell within these enumerated sections and regulations, Section 4(c)'s delegation to the Board is limited to review of "[d]ecisions and recommended decisions by ALJs" in such cases. Newsome has petitioned for review of the letter of a Wage and Hour District Director, not from the decision of an ALJ. Therefore Section 4(c)(10)-(13) does not delegate authority to the Board to review the District Director's letter as requested by Newsome.

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[3] Newsome notes that the Board neglected to include a copy of the Secretary's Order of delegation with the Show Cause Order. The Board apologizes for any inconvenience caused by this omission and the necessity for Newsome to obtain a copy from the Department of Labor's website.

CONCLUSION

In response to the Board's Show Cause Order, Newsome has failed to demonstrate, nor is the Board cognizant of, any basis for asserting jurisdiction in this case. Consequently, we **DISMISS** the petition for review.[4]

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

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[4] In the event that the ARB determined that it did not have jurisdiction in this case, Newsome has requested us to forward her petition to the Secretary of Labor for her consideration. A copy of the petition will be so forwarded.

ADMINISTRATIVE REVIEW BOARD
CERTIFICATE OF SERVICE

CASE NAME : ***Vogel D. Newsome v. Mitchell, McNutt,& Sams, P.A.***

ARB CASE NO.: **04-082**

DOCUMENT : **Final Decision and Order**

A copy of the above-referenced document was sent to the following persons on

SEP 14 2004.

Tisa McRae

CERTIFIED MAIL:

Vogel D. Newsome
P.O. Box 31265
Jackson, Mississippi 39286

Mitchell, McNutt & Sams, P.A.
111 East Capitol Street
Suite 290
Jackson, Mississippi 39201

REGULAR MAIL:

Steven J. Mandel, Esq.
Associate Solicitor
Division of Fair Labor Standards
U.S. Department of Labor
Room N-2716, FPB
200 Constitution Avenue, NW
Washington, DC 20210

Alfred Robinson
Acting Administrator
Wage and Hour Division
U.S. Department of Labor/ESA
200 Constitution Avenue, N.W.
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Howard Radzely
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200 Constitution Ave., NW
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Washington, DC 20210

Clyde Payne
U.S. Department of Labor
Occupational Safety & Health Administration
Jackson Area Office
3780 I-55 North, Suite 210
Jackson, Mississippi 39211

Billy R. Jones
District Director
Jackson Area Office
U.S. Department of Labor
ESA Wage & Hour Division
McCoy Federal Building
100 West Capitol Street, Suite 608
Jackson, Mississippi 39269

VOGEL D. NEWSOME

Post Office Box 31265
Jackson, Mississippi 39286
Phone: 601/362-4910 or 601/885-9536

April 15, 2004

Express Mail

Madonna Cynthia Douglass, Chair
Administrative Review Board
Room S-4309
200 Constitution Avenue, N.W.
Washington, D.C. 20210

RE: *Request for Review of March 19, 2004, Decision Rendered by the United States Department of Labor – Wage and Hour Division, Jackson Mississippi Office*

Charge: Unpaid Wages/Earnings Owed
Employer: Mitchell, McNutt & Sams, P.A.
Employee: Vogel D. Newsome

Notice to Challenge Agency Decision Under the Administrative Procedure Act (APA)

Dear Ms. Douglass:

Enclosed please find the original and three (3) copies of the captioned document. Please forward this document to the appropriate department for docketing and filing and submittal for review by the Administrative Review Board.

Should you have further questions or comments, please do not hesitate to contact me at the above address and phone number.

Sincerely,

Vogel Newsome

Vogel Newsome
Post Office Box 31265
Jackson, Mississippi 39286
(601) 362-4910

cc: Tammy D. McCuthen, Administrator (Wage and Hour Division)

VOGEL D. NEWSOME
Post Office Box 31265
Jackson, Mississippi 39286
Phone: 601/362-4910 or 601/885-9536

April 15, 2004

TO: Administrative Review Board
Room S-4309
200 Constitution Avenue, N.W.
Washington, D.C. 20210
Telephone: (202) 693-6200
Fax: (202) 693-6220

Courtesy Copy: Tammy D. McCuthen, Administrator
Wage and Hour Division
U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, N.W.
Washington, D.C. 20210

REQUEST FOR REVIEW OF MARCH 19, 2004, DECISION RENDERED BY THE UNITED STATES DEPARTMENT OF LABOR - WAGE AND HOUR DIVISION, JACKSON MISSISSIPPI OFFICE

CHARGE: UNPAID WAGES/EARNINGS OWED
EMPLOYER: MITCHELL, MCNUTT & SAMS, P.A.
EMPLOYEE: VOGEL D. NEWSOME

NOTICE TO CHALLENGE AGENCY DECISION UNDER THE ADMINISTRATIVE PROCEDURE ACT (APA)

BEFORE THE ADMINISTRATIVE REVIEW BOARD COMES, Vogel D. Newsome and submit herewith my Request for Review of March 19, 2004, decision rendered by the United States Department of Labor – Wage and Hour Division, Jackson, Mississippi Office. I am requesting that the Administrative Review Board correct any and all errors in the March 19, 2004 decision rendered by the Wage and Hour Division, in the Jackson, Mississippi office and require that the Wage and Hour Division enforce that my employer, Mitchell, McNutt & Sams, P.A., comply with the Fair Labor Standards Act in compensating Vogel Newsome and other nonexempt salaried employees.

I am contacting the Administrative Review Board in regards to concerns of the erroneous decision rendered by the United States Department of Labor - Wage and Hour Division in the Jackson, Mississippi office, said agency's failure to perform the duties owed me as a citizen of the United States, said agency's failure to enforce the Fair Labor Standards Act (FLSA), and said agency's failure to enforce Mitchell, McNutt & Sams, P.A. (MMS) comply with the FLSA and insure that Vogel Newsome and other nonexempt salaried employees are being fairly compensated as required under the Act.

Please be advised, that prior to contacting the Administrative Review Board, the United States Department of Labor - Wage and Hour Division in the Jackson, Mississippi office was promptly, timely and adequately notified of my intentions to seek review of its decision. Said notification is required as a matter of law, before legal action can be brought against the United States, its agency and its employees.

PLEASE TAKE NOTICE, that as a citizen of the United States, I, Vogel D. Newsome, if required and/or necessary intend to seek legal action under the Administrative Procedure Act challenging the ruling of the United States Department of Labor - Wage and Hour Division located in Jackson, Mississippi entered on March 19, 2004.

* * * * *

ISSUES

* * * * *

1. Whether the March 19, 2004, decision rendered by the United States Department of Labor – Wage and Hour Division in the Jackson, Mississippi office is erroneous, and whether said finding/decision is supported by factual evidence.

2. Whether or not the decision rendered by the Wage and Hour Division in the Jackson, Mississippi office can be defeated by factual documentation already in the record and possession of the agency or upon further inquiry and request for additional documentation.

3. Whether the decision entered by the United States Department of Labor – Wage and Hour Division in the Jackson, Mississippi office is arbitrary and/or influenced by unlawful actions.

4. Whether an investigation into the handling of this Charge by agency officials for the Wage and Hour Division is warranted to determine whether there has been an infringement upon Vogel Newsome's Constitutional rights.

5. Whether the United States Department of Labor – Wage and Hour Division in the Jackson, Mississippi office in the handling of Vogel Newsome's Charge failed to perform duties required/mandated by law and administer and enforce the FLSA.

6. Whether an audit of Mitchell, McNutt & Sams, P.A. employees' records are warranted.

7. Whether Vogel Newsome is entitled to unpaid wages/earnings due her from employer, Mitchell, McNutt & Sams, P.A. Is Ms. Newsome entitled to compensation based upon the computation provided for nonexempt salaried employees under the FLSA.

8. Whether the facts and evidence set forth in this instant Request and Notice was available (through documentation already in the possession of the Wage and Hour Division's or obtainable through appropriate request for information) to Wage and Hour officials during the handling of this Charge and upon an investigation and application of the FLSA, would officials have found the violations noted in this instant Request and Notice.

9. Whether Wage and Hour officials involved in handling this Charge had access to applicable FLSA statutes/codes, federal law and authority (as that provided in this instant submittal for Review) to retrieve additional documentation (if needed) to aid them in their decision in the handling of Vogel Newsome's Charge.

10. Whether the Wage and Hour Division officials used the applicable statutes/codes under the FLSA governing said issues raised by the filing of Vogel Newsome's Charge and issues arising *after* the filing of Charge.

11. Whether Vogel Newsome is an employee covered under the FLSA.

12. Whether the fact that Vogel Newsome is a nonexempt salaried employee rather than an hourly wage employee, remove her from provisions/protection of the Fair Labor Standards Act.

13. Whether the United States Department of Labor – Wage and Hour Division in the Jackson, Mississippi office erred in handling of Vogel Newsome's Charge by refusing to enforce the FLSA because she earns well over the minimum wage requirement.

14. Whether Mitchell, McNutt & Sams, P.A., based upon the evidence in the record, is actually paying Vogel Newsome and/or other nonexempt salaried employees a *"fixed"* salary.

15. Whether Mitchell, McNutt & Sams, P.A. (MMS) established a *"clear mutual understanding"* with Vogel Newsome and/or each nonexempt salaried employee as required under the FLSA to pay the nonexempt salaried employee a *"fixed"* salary.

16. Under the FLSA, whether Mitchell, McNutt & Sams, P.A. is unlawfully subjecting Vogel Newsome and/or other nonexempt salaried employees to *"fixed"* salaries. Whether Mitchell, McNutt & Sams, P.A. have an *agreement* with nonexempt salaried employees to pay them a "fixed" salary as required under the FLSA. If so, by what means was an agreement established and/or whether such agreement was established lawfully as required under the FLSA.

17. Whether Mitchell, McNutt & Sams, P.A. is "averaging" the workhours for Vogel Newsome and/or other nonexempt salaried employees. If so, whether the *"averaging of hours"* used by MMS is permissible under the FLSA.

18. Under the FLSA, whether Mitchell, McNutt & Sams, P.A.'s alleged payment for overtime can be credited toward overtime compensation when it has not paid Vogel Newsome and/or other nonexempt salaried employees for nonovertime hours worked up to 40 hours – or the 2½ hours worked between 37½ and 40 hours.

19. Whether Mitchell, McNutt & Sams, P.A.'s compensation for overtime hours, is in fact compensation for overtime payment under the FLSA if MMS has not compensated for ***all*** nonovertime hours first.

20. Whether Mitchell, McNutt & Sams, P.A.'s payment for *only* 2080 work hours a year, regardless of how many "actual" hours Vogel Newsome and/or nonexempt salaried employees have worked in that year – (i.e., there are approximately 2088 work hours a year, but MMS is *only* going to pay 2080. When there is a leap year such as in 2004 where there are approximately 2096 work hours, MMS is only going to pay for 2080) – is lawful/permissible under the FLSA.

21. Whether Mitchell, McNutt & Sams, P.A.'s compensation to Vogel Newsome and/or each nonexempt salaried employee for only 86.67 nonovertime hours *each and every pay period* when the actual work hours worked in the pay period *are more* than 86.67 hours is lawful/permissible under the FLSA, when ***no*** clear and/or mutual understanding of said method of payment between MMS and nonexempt salaried employee(s) has been established.

22. Whether Mitchell, McNutt & Sams, P.A. under the FLSA, can continue to compensate Vogel Newsome and/or each nonexempt salaried employee for only 86.67 hours rather than the *actual* hours worked or the 40 hours a week promised

in its Employee Handbook without the consent of Ms. Newsome and/or consent of nonexempt salaried employees.

23. Under the FLSA, whether Mitchell, McNutt & Sams, P.A. based on its *established* policy is compensating Vogel Newsome and/or other nonexempt salaried employees for 40 hours a week each and every pay period. Whether MMS's according to *established* policy promise/commits to only require nonexempt employee(s) to work 7.5 hours a day, but MMS will compensate nonexempt employees for 8 hours a day in a workweek.

24. Under the FLSA, whether Vogel Newsome and/or other nonexempt salaried employees are actually being compensated by Mitchell, McNutt & Sams, P.A. for 40 hour workweeks when the pay period consist of 11 or 12 actual workdays – i.e.:

12 days x 8 hours a day = 96 hours that Vogel Newsome is to be compensated for, pursuant to MMS Policy No. 401 **Timekeeping**.

86.67 average hrs. by MMS ÷ 12 days in pay period = 7.22 hrs. paid per day in pay period consisting of 12 actual workdays

7.22 hrs. x 5 days = **36.1** total hours MMS is compensating for each workweek *rather than 40 hours* as asserted in its policy (401 **Timekeeping**)

This computes to approximately 3.9 hours a week of unpaid wages due Vogel Newsome in ***every*** pay period consisting of 12 actual workdays

This computes to a loss in wages of approximately $61.89 a week

This computes to a loss in wages of approximately $123.79 for two workweeks

This computes to a total loss in wages of approximately $148.52 ***every*** pay period where there are actually 12 workdays

Under the FLSA, Vogel Newsome is entitled to approximately $1,523.52 in total nonovertime wages – MMS only pays Vogel Newsome $1,375.00 *each and every* pay period and ***refuses*** to pay for ***all nonovertime hours worked.***

25. Whether Mitchell, McNutt & Sams, P.A. has compensated and compensates Vogel Newsome and/or other nonexempt salaried employees for <u>all</u> hours worked each pay period as required under FLSA.

26. Whether Mitchell, McNutt & Sams, P.A. compensates for overtime in the pay period required under the FLSA.

* * * * *

HISTORY OF CHARGE

* * * * *

Attached hereto at **Exhibit 1**, to this Request, please find a copy of a letter dated March 19, 2004, from Billy R. Jones, ("Mr. Jones) District Director – Employment Standards Administration, United States Department of Labor, Wage and Hour Division in the Jackson, Mississippi office, containing the decision rendered by said agency. With said decision, Mr. Jones provided Ms. Newsome with "*Handy Reference Guide to the Fair Labor Standards Act.*"

Attached hereto at **Exhibit 2**, is an excerpt of documents from a ***certified copy*** of some of the contents in the file associated with this Charge/Complaint filed on or about February 11, 2004, with the United States Department of Labor - Wage and Hour Division in the Jackson, Mississippi office. The information contained in this exhibit is being produced for this instant action in hope that the Administrative Review Board will be able to see what the Wage and Hour Division had in its possession during the handling of Vogel Newsome's Charge.

> **NOTE:** I gather this is not a copy of everything in the record pursuant to letter of April 2, 2004, from Carlolyn H. Riddle signed on behalf of John L. McKeon, Regional Administrator, of the United States Department of Labor – Employment Standards Administration, Wage and Hour Division, in the Atlanta, Georgia office. Ms. Riddle asserts that pursuant to Regulation Part 70 (*advises enclosure of copy of Regulation – but did not provide*) that only documents in my file permissible under the Freedom of Information Act are being provided me.
>
> Therefore, if this Administrative Review Board is requiring the entire record from the United States Department of Labor, if the law permits, I request that said Board request that the Department of Labor submit the entire file pertaining to this Charge to the attention of the Administrative Review Board for review.

Attached hereto at **Exhibit 3**, is a copy of my letter of March 19, 2004, to the attention of Billy R. Jones. On said date, Mr. Jones contacted me to discuss my letter and my concerns regarding unpaid wages/earnings owed me from my employer Mitchell, McNutt & Sams, P.A. (MMS).

Attached hereto at **Exhibit 4**, is a copy of my letter of March 22, 2004, with copy of a sample DRAFT of Request and Notice. ***Mr. Jones was advised that there would be additional revisions to Draft prior to submittal to the Administrative Review Board.*** Mr. Jones called me on March 24, 2004, to discuss this letter. From our conversation and the questions he asked, I determined that he had not reviewed the information contained therein. I advised him at the end of the conversation to read my March 22 letter and to provide me with the information requested in said letter.

Attached hereto at **Exhibit 5**, is a copy of the Charge/Complaint, with supporting exhibits submitted to the United States Department of Labor - Wage and Hour Division in the Jackson, Mississippi office on February 11, 2004.

> **NOTE:** I have manually numbered pages in Exhibit 5 for purposes of easy reference/referral therein.

* * * * *

CASE LAW
FLSA - Statutes/Codes
Mitchell, McNutt & Sams, P.A. Policy(s)

* * * * *

NOTE: *Regarding quotes/citations, etc. – bold, italics, underline, etc. have been added for emphasis thereon.*

DUTIES/RESPONSIBILITY OF DEPARTMENT OF LABOR – WAGE AND HOUR DIVISION:

> The Department of Labor enforces the Fair Labor Standards Act (FLSA), which sets basic minimum wage and overtime pay standards. These standards are enforced by the Department's Wage and Hour Division, a program of the Employment Standards Administration.

Exhibit 9.

> The Wage and Hour Division (Wage-Hour) administers and enforces FLSA with respect to private employment. . .

Exhibit 10, p.1.

> **Enforcement:**
> Wage-Hour's enforcement of FLSA is carried out by investigators stationed across the U.S. as Wage-Hour's

> authorized representatives, they conduct investigations and gather data on wages, hours, *and other employment conditions* or *practices*, in order to determine compliance with the law. Where violations are found, they also may recommend changes in employment practices to bring an employer into compliance.

Exhibit 10, p.13.

Walling Administrator of the Wage and Hour Division, U.S. Department of Labor v. Youngerman-Reynolds Hardwood Co., Inc., 325 U.S. § 410, n.2, n. 3, 419, 420

n.2 and see pg. 419:

> The regular rate contemplated by §7(a) of the Fair Labor Standards Act refers to the hourly rate actually paid the employer for the normal, non-overtime workweek for which he's employed . . .

n. 3, p. 420 and see pp. 424-425:

> The regular rate by its very nature **must** *reflect* **all** payments which the parties have agreed shall be received regularly during the workweek, exclusive of overtime payments. *It is not an arbitrary label chosen by the parties; it is an actual fact.* Once the parties have decided upon the amount of wages and the mode of payment the determination of regular rate becomes a matter of mathematical computation, the result of which is unaffected by any designation of a contrary "regular rate" in the wage contracts.

Exhibit 6.

§ 778.223 - **Pay for non-productive hours distinguished:**

> Under the Act an employee **must be** compensated for **all** *hours worked*. As a general rule the term ***"hours worked"*** *will include* (a) **all time** during which an employee is required to be on duty or to be on the employer's premises or at a prescribed workplace and (b) **all time** during which an employee is suffered or permitted to work whether or not he is required to do so. Thus, working time is not limited to the hours spent in active productive labor, but

> includes time given by the employee to the employer even though part of the time may be spent in idleness . . . .

Exhibit 7, p. 31.

MMS No. 502 **Paydays:**

> All employees are paid semimonthly on the 15th and 30th days of the month. Each paycheck will include earnings for all work performed through the end of the payroll period . . . .

Exhibit 8.

MMS No. 502 **Work Schedule:**

> The normal work schedule for all employees is 7.5 hours a day, 5 days a week . . . .

Exhibit 8 attached hereto.

MMS No. 401 **Timekeeping:**

> Every full time staff employee's compensation is based on a 40 hour week. Our standard workweek is a 37½ hour workweek. Our policy is that if you work those additional 2½ hours for any reason that time has already been paid. Additional pay for any amount will not be made until the actual work hours exceed 40 hours per week at which time the pay rate will be at 1½ times the straight time rate.

Exhibit 5, p. 43

EFFECT OF FAILURE TO COUNT OR PAY FOR CERTAIN WORKING HOURS
§ 778.315 - **Payment for all hours worked in overtime workweek is required:**

> . . . all hours worked (see § 778.223) by an employee for an employer in a particular workweek must be counted . . . *extra compensation for the excess hours of overtime under the Act* ***cannot*** *be said to have been paid to an employee unless all the straight time compensation due him for the nonovertime hours under his contract* ***(express or implied)*** *or under any applicable statute has been paid.*

Exhibit 7, pg. 39

§778.317 - **Agreements not to pay for certain nonovertime hours**

> An agreement not to compensate employees for certain nonovertime hours stands on no better footing since it would have the same effect of diminishing the employee's total overtime compensation. An agreement, for example, to pay an employee whose maximum hours standard for the particular workweek is 40 hours, $5 an hour for the first 35 hours, ***nothing for the hours between 35 and 40*** and $7.50 an hour for the hours in, excess of 40 ***would not*** *meet the overtime requirements of the Act.* **Under the principles set forth in** §778.315, **the employee would have to be paid** $25 for the 5 **hours worked between 35 and 40** *before any sums ostensibly paid for overtime could be credited toward overtime compensation due under the Act. Unless the employee* ***is first paid*** $5 ***for each nonovertime hour worked***, the $7.50 per hour ***payment purportedly for overtime hours is not in fact an overtime payment.*** [46 FR 7315, Jan. 23, 1981]

Exhibit 7, pg. 40.

MMS EMAIL 2/05/04 at No. 1:

> **Question:** Pursuant to 401 Timekeeping in the Employee Handbook of MMS, although we work 37.5 hour days, does MMS pay for 40 hours?
>
> **Answer:** As it says in the fifth paragraph of section 401 MM&S compensates "based on a 40 hour week."

Exhibit 5, pp. 4-5.

> **Recordkeeping:**
> The FLSA requires employers to keep records on wages, hours, *and other items*, as specified in Department of Labor recordkeeping regulations. . . . *With respect to an employee subject to the minimum wage and overtime pay provisions,* the following records **must** be kept:
>
> . . .
>
> (2) hour and day when workweek begins;

> (3) ***total*** *hours* worked each workday and each workweek;
> (4) ***total*** daily or weekly straight-time earnings;
> (5) ***regular hourly pay rate*** for any week when overtime is worked;
> (6) ***total*** overtime pay for the workweek; . ..
> (8) ***total*** wages paid each pay period; and
> (9) **date of payment and pay period covered**.
>
> Records *required for exempt* employees differ from those *for nonexempt workers*. . . .

Exhibit 10 (*Handy Reference Guide to the Fair Labor Standards Act*) pp.9 – 10.

PART II – THE FAIR LABOR STANDARDS ACT:

> Other employees work full-time but work 35 or 37½-hour workweeks. In such instances, overtime pay under the FLSA is not required to be paid to employees until they work in excess of 40 hours in a workweek. (*Note, however, the employee may be entitled to pay at the regular rate for any additional hours up to 40, depending on the employer's* ***established*** *policy*.)

Exhibit 5, p.66.

MMS EMAIL 2/05/04 at No. 5:

> **Question:** Would the employee be entitled to receive compensation for 40 hours as expected based on MMS' policy?
>
> **Answer:** Employees are paid based on a 40 hour week. ***We require a minimum of 37.5 hours*** *of work in that week*.

* * * * *

CONVERSATIONS WITH AGENCY REPRESENTATIVE OF WAGE AND HOUR DIVISION - JACKSON, MISSISSIPPI OFFICE

* * * * *

Mr. Jones of the Wage and Hour Division, in the Jackson Mississippi office, refused to enforce the FLSA because Vogel Newsome is paid a salary in lieu of an hourly wage. He advised Ms. Newsome that because she is a salaried employee and earns well over the minimum wage, there is nothing his department can do for her. His department's job is only to enforce the minimum wage requirement and compensation for overtime.

Ms. Newsome received the same excuse from Linda Whatley in the Wage and Hour Division – Jackson, Mississippi office, as well as from John Owens in the Birmingham, Alabama office.

However, based upon information received after research, under **Part II – Fair Labor Standards Act**, it states under APPLICATION OF THE FLSA:

> The simple payment of a salary in lieu of an hourly wage ***does not*** by itself, remove an employee from the provisions of the FLSA.

Exhibit 5, p. 52.

In fact, in the *Handy Reference Guide to the Fair Labor Standards Act* provided me by Mr. Jones on or about March 19, 2004, it provides an example of an employee paid $8.00 an hour – rather than the minimum wage of $5.15 an hour. Mr. Jones and other officials with the Wage and Hour Division wanted to harp/focus on asserting that any charge brought by an employee earning *well above* the minimum wage (such as Vogel Newsome who is paid $15.86 an hour) is not protected under the FLSA, neither does the Wage and Hour Division have jurisdiction over such matters. Yet, from the example in the *Handy Reference Guide* . . ., it provides information that is contrary to what Mr. Jones and other officials advised Ms. Newsome of during the handling of her Charge. It states:

> An employee paid $8.00 an hour works 44 hours in a workweek. The employee is entitled to at least one and one-half times $8.00, or $12.00, for each hour over 40. Pay for the week would be $320 *for the first* 40 hours, plus $48.00 for the four hours of overtime – a total of $368.00.

Exhibit 10, p.11.

> **NOTE:** Ms. Newsome is providing this example because for salaried employees, the FLSA pursuant to §778.113(b) requires that the salary be reduced to its workweek equivalent, and once determined, the regular rate of pay be calculated pursuant to §778.113(a). Therefore, the Wage and Hour Division erred when it refused to enforce the FLSA because Vogel Newsome earns well above the minimum wage requirement. Under the FLSA, because Ms. Newsome is covered under the Act, $5.15 is the minimum wage MMS can pay her, but the Act does not support argument by Mr. Jones and other officials, that because Ms. Newsome makes well over the minimum wage; that the FLSA is not applicable to her and she has no protection or recourse under the Act. Furthermore, the Wage and Hour Division erred when it failed to enforce the FLSA and require that MMS compensate Ms. Newsome (based on her salary) for all hours up to 40 hours before compensation for overtime can be credited.

Moreover, the breakdown of salary to compute hourly rate supports protection under the FLSA pursuant to § 778.113 – ***Salaried Employees – General***. Furthermore, the FLSA provides that:

> Workers who are covered by the FLSA are entitled to a minimum wage *of not less* than $5.15 an hour. Overtime pay at a rate of not less than one and one-half times their regular rate of pay is required after 40 hours of work in a workweek.

Exhibit 9.

This supports that the Wage and Hour Division is not to only focus on employees who earn minimum wage, and totally ignore and/or refuse employees who make well over the minimum wage requirements to determine whether or not an employer is in violation of the FLSA. The minimum wage it appears, is simply just that – the minimum allowed under the Act – ***but does not preclude*** *workers who make well over the minimum wage protection under the Act.*

> *It is important to note that I am a* ***nonexempt*** *salaried employee.*

During my conversations with Mr. Jones on March 19, 2004 and March 24, 2004, he confirmed knowledge regarding the following:

I. <u>HOW TO COMPUTE HOURLY RATE AND PAY</u>:

1. Mr. Jones advised that the hourly rate of pay is determined:
   Annual Salary ÷ 52 ÷ 40.
   Therefore, in my case, it would be:
   33,000 ÷ 52 ÷ 40 = 15.865 ($15.87 per hr. rounded)

   I found however, when using semimonthly method, pursuant to §778.113(b), hourly rate is to be converted to the workweek equivalent and divided by 40 to determine the hourly rate of pay pursuant to §778.113(a).

   Therefore, in my case, it would be:
   1375 x 24 ÷ 52 = 634.615 ($634.62 weekly pay rounded)
   634.62 ÷ 40 = 15.865 ($15.87 per hr. rounded)

   MMS is only compensating me (Ms. Newsome) at $15.86 per hour.

II. <u>Work Hours</u>:

2. Mr. Jones <u>acknowledged</u> that I am a *nonexempt* salaried employee. *He attempted to assert that I have fluctuating workhours.* I believe such assertion by Mr. Jones has been drawn from his conversation(s) with MMS representatives (i.e., Michael Farrell or Jim Allen). **However, this is not the case.**

   Pursuant to MMS "502 **Work Schedules**" of the MMS Employee Handbook, it states:

   > The normal work schedule for all employees is 7.5 hours a day, 5 days a week . . .

   Exhibit 8, attached hereto.

   <u>Mr. Jones and his agency having access to such information. If not already in agency records, could have requested copy of MMS Employee Handbook from MMS or Ms. Newsome during the handling of Charge.</u>

   > **FACT:** I am required by MMS to work 8:30 a.m. – 5:00 p.m., Monday thru Friday – this being 7.5 hours a day, 5 days a week.

Mr. Jones is aware and has knowledge that although I am only required to work 37.5 hours a week, MMS pursuant to MMS's Employee Handbook at 401 **Timekeeping**, that I am supposed to be compensated for 40 hours a week. A copy of this policy was provided to the Wage and Hour Division on February 11, 2004, and is attached hereto at **Exhibit 5.** p.43.

NOTE: **401 Timekeeping** states:

> . . .
>
> Every full time staff employee's compensation is based on a 40 hour week. Our standard workweek is a 37½ workweek. Our policy is that if you work those 2½ hours for any reason that time has already been paid. . . .

Therefore, based on ***established*** MMS policy, it is telling nonexempt salaried employees that they are already being compensated for 40 hours a week although they are only required to work 37½ hours a week. That because of such policy/promise (payment for 40 hours), nonexempt salaried employees should not request compensation for the 2½ hours – difference between 40 hours and 37½ hours (40 – 37.5 = 2.5 or 2½). **HOWEVER**, this is not the case. MMS ***is not*** compensating nonexempt salaried employees for the 2½ hours or for 40 hours a week when the pay periods involve 12 or 11 actual workdays. In fact MMS is paying less than 40 hours each workweek in pay periods consisting of 12 or 11 actual workdays.

[**VIOLATION** of §§§ 778.223, 778.315, 778.317, etc.]

See **PART II – THE FAIR LABOR STANDARDS ACT** of this Request below beginning at p.31. Also *see* **Exhibit 5**, pg. 5, n. 5 of 2/05/04 email from Jim Allen that states:

> ***Question:*** Would the employee be entitled to receive compensation for 40 hours as expected based upon MMS' policy?
>
> ***Answer:*** Employees are paid based on a 40 hour week. ***We require a minimum of 37.5*** hours of work in that week.

*Based on such statement by Mr. Allen, if the employee works the minimum 37.5 hours, the employee qualifies to be compensated for 40 hours for that workweek pursuant to MMS policy and is permissible under the FLSA – See **Exhibit 5**, p.66.

III. FLUCTUATING HOURS:

NOTE: *The record evidence* **will not** *support that there is an agreement between Vogel Newsome and MMS to pay her $14.32 an hour when pay period consist of 12 actual workdays and $15.63 an hour when pay period consist of 11 actual workdays. Such agreement would cause Ms. Newsome's pay rate to change/fluctuate from pay period to pay period. Based upon the information in the record, it appears, that the Wage and Hour Division concluded that Ms. Newsome's hourly rate is to be $15.86 an hour for actual hours worked. Supporting that Wage and Hour Division was aware that no such agreement required under the statute exist to support method of payment used by MMS.*

Exhibit 2.

Because of my concerns that Mr. Jones was attempting to imply that my workweek consisted of "fluctuating hours," I decided to research to determine whether or not he was attempting to make such assertion because of his knowledge of some statute or code which addresses fluctuating hours. I found one at §778.114 – *Fixed Salary for Fluctuating Hours*. **Exhibit 5**, p.101, attached hereto. If indeed Mr. Jones or MMS were to assert that my Annual Salary is "Fixed," – ***when it is not***, it will support both Mr. Jones and MMS having knowledge that pursuant to §778.114:

3. Said statute requires if an employee is employed on a salary basis where the hours of work *fluctuates* from week to week, *that the employer may only pay the salary pursuant to* ***an understanding*** *that the accepted salary received is "****fixed****"* and employee will receive a *fixed* salary as straight time pay for whatever hours the employee is called upon to work in a workweek. (**Emphasis added**, to workweek – MMS does not pay on a weekly or biweekly basis – where paydays are always on Friday. Although standard workweek at MMS is Monday thru Friday, MMS pays semimonthly – where paydays fall on various days between Monday thru Friday.)

   Said statute (§778.114) requires that there be a ***clear mutual understanding*** between employer and employee. The record evidence provided the Wage and Hour Division supports that there was **never** a *clear mutual understanding* between Ms.

Newsome and MMS in regards to MMS's method of payment. Neither did MMS, at the time of employment, provide Ms. Newsome with documentation addressing MMS's method of payment would be based on a "fixed" salary. Furthermore, MMS ***does not*** assert such an argument (fixed salary for fluctuating hours) in its 2/5/04 email response to me. See **Exhibit 5**, pp. 4 - 7.

> **NOTE:** As a matter of law, if Mr. Jones or MMS is asserting that a mutual binding agreement exist between Ms. Newsome and/or other nonexempt salaried employees, then it is important to determine by what means – practices/procedures/ tactics - did MMS go about establishing/obtaining such an agreement (if any).

*Thus, such attempt or assertion, that I have a **fixed salary for fluctuating hours**, by Mr. Jones or MMS under this statute must fail*. There is no factual basis for such a conclusion.

Other nonexempt salaried employees other than Ms. Newsome have questioned their paycheck/stub and the method of payment. Thus, further supporting that MMS does not establish a *clear mutual understanding* with the nonexempt salaried employees and uses unlawful/deceptive tactics to rob them of their wages/earnings. **[An investigation into the practices of MMS would have yielded such information and how MMS goes about the handling of nonexempt employee's salary.]**

Perhaps a practical way to determine this would be to see whether or not MMS maintain any records pertaining to nonexempt salaried employees agreement to being paid in such a manner - such suggestion, would be similar to that in tracking daily and weekly hours. For instance:

> . . . As a practical matter, it is recommended that employee's and immediate supervisor's signatures be used instead of using check marks, as such would be better evidence, should the records be relied on in an investigation by the Wage and Hour Division)
> . . .

Exhibit 5, p. 90.

Furthermore, the record evidence supports from my 2/2/04 email sent to Jim Allen, Chief Operations Officer for MMS, that such *clear mutual understanding* **was not** established between myself and MMS. **[As a matter of law, pursuant to *§ 778.114*, the method used is pertinent to determine whether or not a clear mutual understanding was established – moreover, whether or not MMS used deceptive and/or fraudulent means to obtain such an agreement - if MMS asserts such agreement exist.]**

Furthermore, additional inquiry into this matter would have yielded the following:

a) *At the time of hire,* MMS presents a salary to the employee but <u>does not</u> tell them it is a **"fixed"** salary. Nor does MMS provide nonexempt salaried employees with any documentation regarding the salary agreed upon.

   FACT: I know, because I asked for such information at the time of hire while in MMS' Tupelo office. Mr. Allen ***refused*** to provide me with any documentation regarding the salary agreed upon.

b) *At the time of hire,* MMS advise nonexempt salaried employees that although they are required to work 37.5 hours a week, it is compensating nonexempt salaried employees for 40 hours.

c) *At the time of hire,* MMS **<u>does not</u>** tell the nonexempt salaried employees at the time of hire that, out of 2088 actual work hours a year, it is only going to compensate them for 2080 hours a year. MMS *<u>knowingly</u>* and *<u>deceptively</u>* **conceals** from nonexempt salaried employees that in a regular year, there are approximately 2088 hours, but MMS only pays nonexempt salaried employees for 2080 hours. Based on this fact, MMS withholds earned wages of 8 hours along with other unpaid wages/earnings due employee(s). When the year is a leap year, where there may be 2096 actual work

> hours, MMS only pays employees for 2080 hours. In such cases, under the unlawful practices used by MMS, MMS withholds earned wages of 16 hours along with other unpaid wages/earnings due nonexempt salaried employees.

According to MMS, when questioned about the use of 2080, MMS states:

> . . . 52 weeks X **40 hours/week** = 2080 hours per year. ***This is the standard recognized.*** The other thing to consider is this does not include holidays, sick leave days, other *excused* leaves of absence . . . and vacation days. ***The 2080 is just a standard.***

Exhibit 5, p. 5, n. 7.

Standard pursuant to what statute or laws? Surely, not a standard under the FLSA. *Thus, only a standard used by employers (such as MMS) to deprive employees of wages/earnings.*

NOTE: The FLSA does not, however, require severance pay, sick leave, vacations, or holidays. **Exhibit 9, Exhibit 10** (*Handy Reference Guide . . .*) p.2. **Exhibit 5**, p.48.

d) In 2/5/04 email response to me, MMS attempts to justify its paying for only 2080 hours a year by advising when asked:

> ***Question:*** If MMS pays for only 2080 days (sic) in 2004, will the actual pay periods for Ms. Wingate show that MMS is not going to pay her for 16 hours (2 days work)?
>
> ***MMS Answer:*** The spreadsheet does show 10, 11 or 12 "work days" in each pay period but there are 10 vacation days a year, 12 sick days a year, and 8 or 9 (depending on when 12/26 falls) holidays each year *plus other* **approved** leaves of absence *as documented in the MMS Handbook.* We do not subtract anything from those days taken. **The salary stays the same each and every pay period.**

Exhibit 5, p. 5, n. 6.

> **NOTE:** Clarity is needed to address this issue because, if I recall, Mr. Jones of the Wage and Hour Division – Jackson, Mississippi office, attempted to support such a frivolous response in efforts of shielding and condoning the unlawful practices of MMS's withholding earned wages/earnings due nonexempt salaried employees. It is MMS's approved and established practice (as noted in answer – referencing Employee Handbook) to pay employees these benefits. Such benefits **are not** required under the FLSA. Thus, Mr. Jones' and MMS's relying on the rendering of company benefits to rob/deprive nonexempt salaried employees of wages/earnings is in violation of the FLSA.

Exhibit 9.

e) *At the time of hire,* MMS **does not** tell nonexempt salaried employees that it will only pay for 86.67 hours each and every pay period regardless of the number of hours worked. The 86.67 is derived from:

> 2080 (40 x 52) hrs. ÷ 24 = 86.666 (86.67 rounded) - **NOTE:** This is based on 40 hours a week, ***not*** semimonthly.
>
> 86.67 is the ***average*** *number of hours when* ***only*** *compensating for 2080 hours a year.*

f) MMS at the time of employment of nonexempt salaried employees, *knowingly* and *deceptively* withhold information from nonexempt salaried employees that, when there are 12 actual workdays in the pay period and MMS assures employees that they are being compensated for 8 hours per day - (MMS Employee Handbook at 401) - for a total of 96 hours - that MMS is only going to compensate the nonexempt salaried employee for 86.67 of those

hours, although the nonexempt salaried employee actually worked the 96 hours or the minimum hours required by MMS to be compensated for the day/work hours. MMS has advised the nonexempt salaried employee through *established* policy(s), that compensation has already been paid for hours up to 40 hours worked - MMS Policy 401 and §778.113(a)(b):

i) In a pay period where there are:
12 days x 8 hrs = 96 ***normal nonovertime hours***, I am entitled to the following:

15.87 x 96 = $1523.52 ($1,524 rounded)
MMS only pays me $1375 *each and every pay period regardless of the normal nonovertime hours worked.* See **Exhibit 5**, p.5, n.6. Resulting in:

Unpaid wages/earnings of approximately: **$149**

Therefore, I am presently losing approximately $149 (based upon my current salary) each pay period where there are 12 actual workdays.

ii) In a pay period where there are:
11 days x 8 hrs = 88 ***normal nonovertime hours***, I am entitled to the following:

15.87 x 88 = $1396.56 ($1,397 rounded)
MMS only pays me $1,375 *each and every pay period regardless of the normal nonovertime hours worked.* See **Exhibit 5**, p.5, n.6. Resulting in:

Unpaid wages/earnings of approximately: **$22**

Therefore, I am presently losing approximately $22 (based upon my current salary) each pay period where there are 11 actual workdays.

iii) In a pay period where there are:
10 days x 8 hrs = 80 ***normal nonovertime hours***, I am entitled to the following:

15.87 x 80 = $1269.60 ($1,270 rounded)
MMS pays me $1375 *each and every pay period regardless of the normal nonovertime hours worked.* Resulting in:

Overage of only approximately: $105

IT IS IMPORTANT TO NOTE: From said computation that nonexempt salaried employee still suffer losses in wages/earnings and MMS's payment of wages/earnings **does not** balance out at the end of the year – As Mr. Jones attempted to assert during conversation. *Even if it did*, **when it does not**, the method of payment for wages/earnings used by MMS is not in compliance with FLSA pursuant §§ 778.113 **(Exhibit 5**, p.101), 778.104 **(Exhibit 5**, pp. 98 - 99), 778.223 **(Exhibit 7)**, 778.315 **(Exhibit 7)**, 778.317 **(Exhibit 7)**, and any and all other applicable laws governing said matters. Employees are entitled to full pay for *normal nonovertime workweek* each pay period, and said pay **is not** to be rationed out a little at a time and/or averaged by MMS. For instance:

$149 + $22 = $171 (approximate wages/earnings loss when pay period consist of 12 or 11 workdays)

$171 - $105 (overage by MMS) = approximate **$66** loss to nonexempt salaried employee(s).

Under the present unlawful payment computation/method used by MMS, I will lose a minimum of approximately **$263.52** in wages/earnings for the year 2004 based on the method of payment used by MMS. See spreadsheet provided **Exhibit 5, p. 30 -**

> provided to the United States Department of Labor - Wage and Hour Division located in Jackson, Mississippi on or about February 11, 2004.

NOTE: Mr. Jones advised me not to pay attention to the 86.67 hours that are reflected (or can be proven to be the total number of hours compensated in paychecks/stubs) as being compensated. Mr. Jones advised, that the 86.67 means nothing. *This is the same thing representatives for MMS advised Ms. Newsome of when she questioned the 86.67* - thus, raising concerns as to whether or not Mr. Jones conversed with MMS during handling of Charge and was providing this response based on MMS' feedback. **Moreover, the record evidence will support that the 86.67 is in fact meaningful**. MMS is in fact *only* compensating for 86.67 hours each pay period - thus, information is pertinent and valid because the correct computation will support that 86.67 x $15.86 (hrly rate paid by MMS) = $1375 (rounded). $1,375 being the total compensation Ms. Newsome receives each and every pay period regardless of the number of hours worked. Ms. Newsome **is not** an exempt employee.

MMS attempt to justify such unlawful practices can be found at #6 of Email of 2/05/04 from Mr. Allen:

> ***Question:*** If MMS is only paying approximately 39.4 hours a week (in a work period of 11 days), are there not a loss in hours that should have been paid to the employee based on MMS' policy?
>
> ***Answer:*** There may be periods with 10 days and perhaps 12 days. The salary is always the same each and every pay period.

Exhibit 5, p.5, n.6.

Keeping in mind that Ms. Newsome and other nonexempt salaried employees are not exempt employees.

THUS, based on said response, I believe it is safe to conclude that MMS is paying nonexempt salaried employees a **"fixed"** salary. In doing so, such actions by MMS is not in

compliance with the FLSA. A clear and mutual understanding ***was not*** *established* between MMS and its nonexempt salaried employees. When I questioned Mr. Allen about such practices, he appeared to me to become irritated, and, from our conversations, left me with the feeling that questioning such unlawful practices would cost me my job.

Enforcement:
It is a violation to fire or in any other manner discriminate against an employee for filing a complaint or for participating in a legal proceeding under the FLSA.

THEREFORE, it is important to determine the method and practices used by MMS in discussing salaries with nonexempt salaried employees and *what facts are actually made known* to nonexempt salaried employees at the time of hire to determine whether a clear mutual understanding has been reached regarding salary.

g) MMS pays its employees on the 15th and the 30th (not the last day) of each month. The 15th pay check is supposed to cover the 1st thru the 15th. The 30th paycheck is supposed to cover the 16th through the end of the month. If the month has 31 days, supposedly the 31st pay is included in the 30th paycheck. See **Exhibit 5**, p.6, n.13 of 2/5/04 email. Thus, based on MMS's policy, the pay period of the 15th should have a "Period Beg. date of 12/31/03," if the "Period end:" on prior paycheck/stub reflects "12/30/03." However, this is not the case.

Exhibit 5, pp. 35,37, 40, 42.

MMS 403 Paydays:
All employees are paid semimonthly on the 15th and 30th days of the month. ***Each paycheck will include earnings*** for all work performed ***through the end of the payroll period***.

For instance, in review of my paycheck/stub for the pay period ending in February, it reflects: "Period end: 2/29/04." (Check/Stub received after filing of Charge) If indeed checks issued by MMS where the months have 31 days, then paycheck/stubs would reflect said date on it. However, each and every 30th paycheck/stub (except February end) I have received from MMS ***prior*** to bringing this Charge, reflects that the "Period end:" date is up until the 30th.

Moreover, to support the fact that MMS ***knowingly*** and through ***deceptive practices*** **does not** reveal or advise nonexempt employees that they are being paid a ***fixed*** salary, it removes from the paycheck/stub the "Period beg:" information so that nonexempt salaried employees are not aware that when the month has 31 days and the 31st falls on a workday, that indeed they **are not** being paid for this day. If indeed MMS were paying employees for the 31st when it falls on a workday, the paycheck/stub would reflect same (e.g., Period beg: 12/16/04 and Period end: 12/31/03). However, MMS paychecks/stubs I have received prior to filing this charge with the Wage and Hour Division – Jackson, Mississippi office, *does not* reflect such, and clearly indicates "Period end: 12/30/2003" with ***no*** "Period beg:" date information. All paychecks/stubs except that received in February clearly supports that MMS pay periods end on the 30th. If MMS makes the necessary adjustment for February, then said adjustments can be made for months having 31 days.

Had the Wage and Hour Division in the Jackson Mississippi office requested review of MMS' employee(s) record(s) requesting that it reflect the following pursuant the FLSA:

> **Recordkeeping:**
> The FLSA requires employers to keep records on wages, hours, *and other items*, as specified in Department of Labor recordkeeping regulations. . . . *With respect to an employee subject to the minimum wage and overtime pay provisions*, the following records **must** be kept:
>
> . . .
>
> (2) hour and day when workweek begins;

> (3) ***total*** *hours* worked each workday and each workweek;
> (4) ***total*** daily or weekly straight-time earnings;
> (5) ***regular hourly pay rate*** for any week when overtime is worked;
> (6) ***total*** overtime pay for the workweek; . ..
> (8) ***total*** wages paid each pay period; and
> (9) **date of payment and pay period covered**.
>
> Records *required for* ***exempt*** employees differ from those *for* ***nonexempt*** *workers*. . . .

It would have found that MMS is not operating nor is MMS in compliance with the FLSA.

Exhibit 10 (*Handy Reference Guide to the Fair Labor Standards Act*) –pp.9 – 10.

> **FACT: ONLY AFTER** *providing Mr. Jones with a sample "Draft" of this Request for Review*, it appears that MMS has now began to reflect that the "Period end:" information show the 31st, if applicable. On my March 30, 2004, paycheck/stub, it reflects "Period end: 03/31/04." Perhaps a coincident – but raises some reasonable doubt and reasonable concerns – mainly due to Mr. Jones' ***relationship*** with Attorney Mike Farrell (attorney employed by MMS). **HOWEVER, it is important to note, that MMS still refuses to place the "Period beg:" information on the paycheck/stub so that nonexempt salaried employees can actually see what days are actually being compensated for in the paycheck/stub provided/received.**

NOTE: Mr. Jones knowledge and acceptance of such deceptive and fraudulent practices of MMS is a clear violation of federal laws and the Fair Labor Standards Act.

IV. AVERAGING OF HOURS:

4. Mr. Jones had knowledge that pursuant to §778.104 – **"Each Workweek Stands Alone."** Mr. Jones having a clear understanding that MMS does not pay biweekly wherein the pay period falls on every Friday (or every other Friday). ***Mr. Jones having knowledge that MMS have pay periods, which compensate for days worked which covers hours/period of time exceeding 2 weeks***. Thus, under said statute, averaging of hours are not permitted:

> **The Act** takes a single workweek as its standard and **does not permit averaging of hours** *over 2 or more weeks*. . . . This is true regardless of whether the employee works on a standard or swing-shift schedule and regardless of whether he is paid on a daily, weekly, biweekly, monthly or other basis.

Exhibit 5, pp. 98 – 99.

I advised Mr. Jones of said statute to be certain he was familiar with it. He confirmed he was.

MMS acknowledges the ***averaging of hours*** method to pay its nonexempt salaried employees. See **Exhibit 5**, p.5, n.2 of 2/5/04 email.

Said payment method used by MMS ***is not*** in compliance with the FLSA and *is in clear violation* of federal laws/FLSA. Because MMS has elected to use the semimonthly method and pay on the 15th and 30th (30th when applicable), of the month, any pay periods consisting of 12 days or 11 days, the hours **cannot** and **are not** to be *averaged* pursuant to § 778.104. Pursuant to §778.113(a)(b) the hourly rate is to be computed and nonexempt salaried employees paid the hourly rate for ***all*** **normal *nonovertime* hours**. Pursuant to MMS Handbook Policy 401 and 502.

It would not be hard to compute total number of hours per day and for the pay period if MMS through established policies states that it is compensating employees for 40 hours a week – that is 8 hours a day (Monday thru Friday – 5 days x 8 hrs. = 40 hours).

> Pursuant to MMS Policy No. 502 Work Schedules, a pay period of 12 actual days would cover two weeks (when workweek comprise of Monday thru Friday) and two days – thus, supporting hours for pay period is over two weeks, etc.

V. MMS'S METHOD OF PAYMENT FOR NON-EXEMPT SALARIED EMPLOYEES:

Mr. Jones was advised of the disadvantage to employees in the method of payment MMS relies upon. Mr. Jones ***confirmed*** on March 19, 2004, that there *is* ***no*** statute/code under the FLSA to support MMS's method of payment for nonexempt salaried employees pay.

Thus, sufficient to support Mr. Jones - in the United States Department of Labor - Wage and Hour Division located in Jackson, Mississippi - was aware MMS's method of payment to its nonexempt salaried employees is in violation of the FLSA, yet failed to administer and enforce the Act and request that MMS comply with the Act in paying Ms. Newsome and other nonexempt salaried employees in a manner mandated by law.

5. *Mr. Jones acknowledged that MMS' method of computation used to compensate nonexempt salaried employees is a common method used by many employers, yet failed – when asked - to provide me with statute/codes to support the actions by such employers.* I advised Mr. Jones, although it may be a common method used by employers, is it in compliance with the FLSA? *Mr. Jones confirmed that provisions for such method of payment* ***is not*** *covered under the FLSA*.

> **NOTE:** The Wage and Hour Division **does not** require that employers practicing in such a manner produce factual documentation of a *clear mutual consent* from nonexempt salaried employees approving the method of payment – such as that used by MMS – whether such consent was obtained, and the method (whether deceptive and/or fraudulent) used in obtaining said agreement, to determine whether such practices are lawful and/or in violation of the FLSA.

Therefore, it is my belief that based on Mr. Jones' comment, that because this is a commonly known method of payment among many employers, rather than correct the problem – because there are so many - the Wage and Hour Division simply looks the other way or as in my case, enter a false report/decision on its findings and burden the employees/citizens of the United States to bring a private lawsuit, to correct FLSA violations, against the employer

for the known violations. Burdening the employees to do the job that the Wage and Hour Division is required and mandated to perform as a matter of law. The duties of the Wage and Hour Division is prescribed by law and cannot be shirked and placed upon employees to do so.

MMS although requested to produce to me the statute/code it relies upon to support its method of payment, has failed to do so. See **Exhibit 5**, p.5, n.3 of 2/5/04 email. It states:

> ***Question:*** I am researching the use of "averaging hours." Is there a statute or rule this is based upon? If so, can you provide me with the information so that I may view it. I found a statute; however, it could be the wrong one. The one I found does not allow for averaging of hours that covers a period of two weeks or more. See attached hereto as (29 C.F.R. 778.104 – ***Each Workweek Stands Alone***).
>
> ***Answer:*** I will have Mike Farrell give you the information about the FLSA statute **since he practices in that area**.
>
> **TO DATE:** Neither Mr. Farrell/MMS nor Mr. Jones/Wage and Hour Division have produced a statute/code to support MMS' practices are in compliance with the FLSA.

NOTE: It is also important to note that Mike Farrell is an attorney employed by MMS and practices in employment law – wage and hour. Mr. Farrell has a **well established relationship** *with the Wage and Hour Division in the Jackson, Mississippi office – Mr. Jones, Ms. Whatley, etc.*. Thus, important to mention because it may have a bearing on the Jackson, Mississippi office's **inability to remain impartial** in handling this Charge/Complaint. Thus, perhaps explaining the actions by said agency and its failure to enforce that MMS comply with the FLSA and compensate Ms. Newsome and other nonexempt salaried employees as the law requires.

VI. Nonovertime/Straight/Regular Rate of Pay:

6. Mr. Jones was advised, and had knowledge, that my Charge/Complaint was submitted because of my concerns of not receiving earned wages/earnings for hours I have actually worked or that MMS promises through ***established*** policy have been paid.

Yet, Mr. Jones wanted to just focus on whether or not I receive minimum wage or overtime. As though the Wage and Hour Division's only responsibility involves compensation to workers receiving minimum wage only and only overtime issues. **Even if Mr. Jones wanted to assert such, such argument must fail pursuant to § 778.315 and § 778.317**.

Mr. Jones is also familiar with §778.108 – The "Regular Rate." Under said statute, the law requires:

> The "regular rate" of pay under the Act **cannot** be left to a declaration by the parties as to what is to be treated as the regular rate for an employee; it must be drawn from what happens under the employment contract (*Bay Ridge Operating Co. v. Aaron*, 334 U.S. 446). The Supreme Court has described it as the hourly rate actually paid the employee *for the normal, **nonovertime*** workweek for which he is employed – an "actual fact" (*Walling v. Youngerman-Reynolds Hardwood Co.*, 325 U.S. 419).

Exhibit 6, Exhibit 7, and **Exhibit 5** (at p. 100).

> **NOTE:** This was taken from the booklet Linda Whatley in the Wage and Hour Division, Jackson, Mississippi office provided me on 2/9/04, entitled: *Regulations Part Interpretative Bulletin on Overtime Compensation*.

Exhibit 5, p.97.

Furthermore, §778.108, §778.315, §778.316, §778.317, etc. were available to Mr. Jones to support that my Charge/Complaint was valid, and, that under the federal labor laws, I am entitled to the unpaid wages/earnings promised me pursuant to 401 of MMS's policy and FLSA.

Overtime is only paid for hours worked above 40 hours in a work week. Thus, Mr. Jones was fully aware that if MMS is claiming to compensate me for overtime pay, then the 40 hours for the *normal **nonovertime** workweek/hours* have been met and therefore **must be paid for pursuant** to **§778. 108, §778.223, §778.315, §778.316, §778.317,** etc.

In the "*Handy Reference Guide to the Fair Labor Standards Act*" provided me by Mr. Jones with the agency's decision of March 19, 2004, on page 10 - Hours Worked:

> ***Covered** employees* **must be paid** for ***all hours worked in a workweek***. In general, "hours worked" includes ***all*** time an employee must be on duty, or on the employer's premises or at any other prescribed place of work. Also included is any additional time the employee is allowed (i.e., suffered or permitted) to work.

Exhibit 10, p.10.

The United States Department of Labor – Wage and Hour Division in the Jackson, Mississippi office on February 11, 2004, was provided with:

* * * * *

PART II
THE FAIR LABOR STANDARDS ACT:

* * * * *

This is at **Exhibit 5**, pp.44 – 96.
See attached hereto at **Exhibit 5**, p.66, which states:

> . . . Other employees work full-time but work 35 or 37½-hour workweeks. In such instances, overtime pay under the FLSA is not required to be paid to employees until they work in excess of 40 hours in a workweek. (Note, however, that the employee may be entitled to pay at the regular rate for any additional hours up to 40, *depending on the employer's **established** policy*.)

Mr. Jones attempted to be technical and focus on the "may" be entitled to pay depending on employer's policy. Yet, Mr. Jones refused to be technical when presented with the MMS policy which supports that it compensates employees for 40 hours a week. An ***established*** policy by MMS.

Mr. Jones has knowledge that, based upon MMS' ***established*** policy, it is not hard to determine the normal nonovertime workweek hours in the pay period. For a regular workweek there are 5 days at 8 hours = 40 hours each week. Therefore, if there are 12 actual work days in the pay period, then normal nonovertime work hours would be 96 hours – this is computed 12 days x 8 hours per day = 96 total hours.

Mr. Jones was put on notice that MMS was not paying Ms. Newsome and/or other nonexempt salaried employees for 40 hours a week as stated under MMS policy. Mr. Jones having access and/or knowledge to statute/codes applicable to the issues raised in this Charge. Yet, elected not to enforce the FLSA and all other applicable federal laws within his agency's jurisdiction governing said issues/matters. Mr. Jones was advised by me to review the documentation presented him. My TimeClock and Paycheck/stub information will support what has actually been paid by MMS to me for normal nonovertime hours and how MMS is compensating nonexempt salaried employees. For instance, Mr. Jones was put on notice that:

(a) In pay periods with 12 days – there are approximately 96 total nonovertime hours:

> MMS only compensates nonexempt salaried employees for 86.67 hours.
>
> 86.67 average hours per MMS ÷ 12 days = 7.2225 (7.22 rounded - hours per day)
>
> 7.22 hrs. per day x 5 days = 36.1 hours per week paid by MMS. 40 hours - 36.1 hours = **3.9 hours** *nonexempt employees are not paid for.*
>
> FACT: 7.22 (hrs a day) x 12 (workdays in pay period) x $15.87 (hrly rate) = $1,375 (rounded) - Therefore, $1,375 semimonthly salary MMS pays Ms. Newsome is for $572.91 (**rather than $634.62 required pursuant to** §778.113) a week, and $114.58 a day - (572.91 x 2 (weeks)) x (114.58 x 2 (days)) = $1,374.98 ($1,375 rounded) - Thus the evidence supports that the semimonthly *salary compensation was for only* 7.22 hours a day in the pay period and ***does not*** compensate for 40 hours a week and or 8 hours a day, but MMS payment only compensates for 36.1 hours a week and **does not** *compensate for all nonovertime/straight time hours* in the pay period.

3.9 hours being total hour(s) **a week** owed nonexempt employees that MMS pursuant 401 **Timekeeping** is asserting has already been paid. Such assertion by MMS with knowledge that it has not paid for these hours.

Exhibit 5, p. 41.

For example, looking at the paycheck/stub for Ms. Newsome at **Exhbit 5**, p. 41, it will reflect "Total Hours" being "97.46." The 97.96 includes the overtime hours MMS

asserts is being compensated in this pay period and ***is*** ***not*** actual "straight time/nonovertime" hours. It is:

86.67 (average hours used by MMS)
+ 10.67 (see "O/T (included in wages" section on paycheck/stub)
97.46 (how they determine total hours shown on paycheck/stub)

NOTE: Mr. Jones was made aware and is aware of the unlawful practices of MMS. Yet he failed to enforce and require that MMS comply with the FLSA pursuant to the applicable statutes/codes.

(b) In pay periods with 11 days – there are approximately 88 total nonovertime hours:

MMS only compensates nonexempt salaried employees for 86.67 hours.

86.67 average hours per MMS ÷ 11 days = 7.879 (7.88 rounded - hours per day)

7.88 hrs. per day x 5 days = 39.4 hours per week paid by MMS. 40 hours - 39.4 hours = **.60 hours** *nonexempt employees are not paid for.*

FACT: 7.88 (hrs a day) x 11 (workdays in pay period) x $15.87 (hrly rate) = $1,376 (rounded) - Therefore, $1,375 semimonthly salary MMS pays Ms. Newsome is for $625.21 (**rather than $634.62 required pursuant to** §778.113) a week, and $125.06 a day - (625.21 x 2 (weeks)) x (125.06 x 1 (day)) = $1,375.62 ($1,376 rounded) - Thus the evidence supports that the semimonthly *salary compensation was for only* 7.22 hours a day in the pay period and ***does not*** compensate for 40 hours a week and or 8 hours a day, but MMS payment only compensates for 39.4 hours a week and **does not** *compensate for all nonovertime/straight time hours* in the pay period.

.60 hours being total hour(s) **owed** nonexempt employees that MMS pursuant 401 Timekeeping is asserting has already been paid. Such assertion by MMS with knowledge that it has not paid for these hours.

Exhibit 5, pp. 35, 36, 39, 40, and 42.

Keeping in mind that **"Total Hours"** reflected includes overtime hours in computation. Therefore, "Total Hours" comprise of 86.67 + (overtime hours reflected in "O/T (included in wages)" section of paycheck/stub.

NOTE: Mr. Jones is aware of the unlawful practices of MMS. Yet failed to enforce and require that MMS comply with the FLSA.

PURSUANT TO §778.317 - Unless employee is first paid for each nonovertime hour worked, the payment MMS purports to pay for overtime hours **is not** in fact an overtime payment.

Therefore, under the FLSA, if MMS has failed to compensate Ms. Newsome and/or nonexempt salaried employees for actual nonovertime hours worked, the overtime compensation MMS may assert has been paid, pursuant to the FLSA, actually ***has not*** been paid.

Based on the information in the possession of the United States Department of Labor - Wage and Hour Division in the Jackson, Mississippi office, MMS' policy(s), TimeClock and paycheck/stub information provided, the following facts are shown (based upon my understanding of the FLSA/statutes/codes):

NOTE: MMS uses a computer program called TimeClock to track nonexempt salaried employees time. Thus, there is no excuse for MMS' failure to compensate for all nonovertime and overtime hours in the appropriate pay period.

Ms. Newsome does not claim to be an expert in the wage and hour laws; however, she believes that if her computation is off, the information presented here is provided to present facts and hopes that the Board will compute correctly and/or understand that the arguments contained in this Request and Notice are valid.

Date Note: "W" denotes workweek	Hours	Meet Minimum Hrs. Workday/week Requirements Y= Yes N= No	Normal Nonovertime Pay Due	MMS Paid
(W) 10/06/03	40.03	Y	364.80	
10/13/03	7.85	Y	126.96	
10/14/03	7.98	Y	126.96	
10/15/03	9.22	Y	126.96	
Overtime:	.03		.71	
		Total:	1016.39	916.67
			Total Hours Worked:	65.08
			MMS - Hours Compensated for:	*57.80*
			401 Timekeeping - (MMS Policy) - Hours that should have been Compensated:	*65.25*
			Difference:	***7.45***

MMS did not compensate for overtime in this pay period.

15th falls on a day during the workweek and total hours could not be computed at the time of pay.

NOTE: MMS **does not** compensate for ***all*** nonovertime hours actually worked. MMS **does not** always compensate for overtime in the pay period required pursuant to § 778.106. From my experience, if I did not inquire into my overtime, etc. MMS would not have paid. Although there are times when overtime cannot be computed because MMS pays semimonthly and the total hours for the workweek has not been computed, when the next pay period arrives, MMS does not always compensate the employee for all overtime due unless questioned about it and/or MMS pays it when MMS desires to do so – whichever is convenient for MMS. MMS rations and pays according to its own procedures and not that of the FLSA.

Exhibit 5, p.34

Date Note: "W" denotes workweek	Hours	Meet Minimum Hrs. Workday/week Requirements Y= Yes N= No	Normal Nonovertime Pay Due	MMS Paid	
10/16/03	8.00	Y	126.96		
10/17/03	7.87	Y	126.96		**Last day in workweek (40.92 hrs for week)**
(W) 10/24/03	41.00	Y	634.80		
10/27/03	7.40	Y	126.96		
10/28/03	8.40	Y	126.96		
10/29/03	7.82	Y	126.96		
10/30/03	8.97	Y	126.96		
Overtime:	1.92		45.72		
			1442.28	1420.69	
			Total Hours Worked:	89.46	
			MMS - Hours Compensated for:	*88.59*	
			401 Timekeeping - (MMS Policy) - Hours that should have been Compensated:	*90.62*	
			Difference:	***2.03***	

NOTE: MMS compensates 1.92 overtime hours.

Exhibit 5, 35

10/31/03	8.03	Y	126.96		**Last day in workweek (40.62 hrs for week)**
(W) 11/07/03	39.17	Y	634.80		
(W) 11/14/03	38.37	Y	634.80		
Overtime:	.62		14.76		
		Total:	1411.32	1389.75	
			Total Hours Worked:	85.57	
			MMS - Hours Compensated for:	*87.29*	
			401 Timekeeping - (MMS Policy) - Hours that should have been Compensated:	*89.00*	
			Difference:	***1.71***	

NOTE: MMS compensates .62 overtime hours.

Date Note: "W" denotes workweek	Hours	Meet Minimum Hrs. Workday/week Requirements Y= Yes N= No	Normal Nonovertime Pay Due	MMS Paid
(W) 11/17/03	45.12	Y	634.80	
(W) 11/24/03	41.20	Y (Holiday)	634.80	
Overtime:	6.32		150.48	
			1420.08	1454.01
			Total Hours Worked:	71.32
			MMS - Hours Compensated for:	*89.99*
			401 Timekeeping - (MMS Policy) - Hours that should have been Compensated:	*85.12*
			Difference:	***-4.87***

NOTE: MMS only compensates for 3.32 hours.

Approved Absence pursuant to MMS 305 **Holidays** (Thanksgiving and the day after)

(W) 12/01/03	43.83	Y	634.80	
(W) 12/08/03	42.88	Y	634.80	
12/15/03	**8.42**	**Y**	126.96	
Overtime:	6.71		159.77	
			1556.33	1508.98
			Total Hours Worked:	95.13
			MMS - Hours Compensated for:	*92.30*
			401 Timekeeping - (MMS Policy) - Hours should have been Compensated:	*95.91*
			Difference:	***3.61***

Exhibit 5, p.39 NOTE: MMS compensates for only 5.63 in overtime hours.

Date Note: "W" denotes workweek	Hours	Meet Minimum Hrs. Workday/week Requirements Y= Yes N= No	Normal Nonovertime Pay Due	MMS Paid
12/16/03	8.00**	? (Jury Duty)	126.96	
12/17/03	8.10***	?	126.96	
12/18/03	8.63	Y	126.96	
12/19/03	7.33	Y	126.96	**Last day in workweek (40.48 hrs for week)**
(W) 12/23/03	38.77	Y	634.80	
12/29/03	7.97	Y	126.96	
12/30/03	8.90	Y	126.96	
Overtime:	.38		9.05	
			1405.61	1375.00
			Total Hours Worked:	87.70
			MMS - Hours Compensated for:	*86.67*
			401 Timekeeping - (MMS Policy) - Hours that should have been Compensated:	*89.15*
			Difference:	*2.48*

Exhibit 5, p.40 NOTE: MMS did not compensate for overtime.
** Approved Leave – Jury Duty pursuant to MMS Policy No. 311.
***Forgot to use TimeClock – Correct time is 8.10 for the day.

12/31/03	**6.57**	Y	126.96	
01/01/03	8.00	Holiday	126.96	
01/02/03	9.38	Y	126.96	
01/03/03	5.88	Y	126.96	**Last day in workweek (46.70 hrs for week)**
(W) 1/5/04	41.68	Y	634.80	
01/12/04	7.92	Y	126.96	
01/13/04	9.88	Y	126.96	
01/14/04	9.83	Y	126.96	
01/15/04	**8.23**	**Y**	126.96	
Overtime:	6.70		159.53	
			1834.01	1631.77
			Total Hours Worked:	99.37
			MMS - Hours Compensated for:	*97.46*
			401 Timekeeping - (MMS Policy) - Hours that should have been Compensated:	*108.57*
			Difference:	*11.11*

NOTE: MMS compensates for 10.79 hours in overtime.

Date Note: "W" denotes workweek	Hours	Meet Minimum Hrs. Workday/week Requirements Y= Yes N= No	Normal Nonovertime Pay Due	MMS Paid
01/16/04	8.62	Y	126.96	
(W) 01/19/04	40.47	Y	634.80	
(W)01/26/04	40.62	Y	634.80	
Overtime:	4.95		1514.42	1521.35

Total Hours Worked:	89.71
MMS - Hours Compensated for:	*92.82*
401 Timekeeping - (MMS Policy) - Hours that should have been Compensated:	*89.32*
Difference:	***-3.50***

NOTE: MMS compensates for 6.15 hours in overtime.

(W) 02/02/04 38.87 Y
NOTE: TimeClock and Paycheck/stub provided to Wage and Hour Division up to this date.

Exhibit 5, pp. 12 – 29, 32 – 33 and 34 – 42.

* * * * *

ADMINISTRATIVE PROCEDURE ACT (APA)

* * * * *

The United States Department of Labor – Wage and Hour Division, Jackson Mississippi office, as a matter of law, failed to enforce the Fair Labor Standards Act (FLSA) and require that Mitchell, McNutt & Sam, P.A. (MMS) comply with federal laws governing payment of wages/earnings for Vogel Newsome. *Mr. Jones **knowingly** submitted a **false** and **erroneous** decision in efforts of forcing Vogel Newsome to bring a private legal action against MMS.* By performing such unlawful acts, Mr. Jones actions are now subject to be challenged under the applicable laws and prosecution may be executed against the United States, it's agency and employees (if applicable) due to Mr. Jones' unlawful actions/conduct. Thus:

> an agency's failure to follow its own regulations may be challenged under the APA. *Webster*, 486 U.S. 601, n.7, 108 S.Ct. 2047.

n. 7 states:

> We understand that petitioner concedes that the Agency's failure to follow its own regulations can be challenged under the APA as a violation. . . *Doe v.Casey*, 254 U.S. App. D.C. 282, 796 F.2d 1508; *see* also *Service v. Dulles*, 354 U.S. 363 (1957) (recognizing the right of federal courts to review an agency's actions to ensure that its own regulations have been followed) . . .

Pursuant to 5 U.S.C. §702:

> ***A person suffering legal wrong because of agency action,*** *or adversely affected or aggrieved by agency action within the meaning of relevant statute,* **is entitled** *to judicial review thereof.* An action in a court of the United States seeking relief other than money damages and **stating a claim that an agency or an officer or employees thereof acted or failed to act in an official capacity** or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: **Provided,** that any mandatory or injunctive decree shall specify the federal officer or officers **(by name or by title)**, and their successors in office, personally responsible for the compliance . . .

From Ms. Newsome's conversation with Mr. Jones, Linda Whatley - in the Jackson, Mississippi office, Mr. John Owens - in the Birmingham, Alabama office (person assigned matter), and Mr. Jones' letter of March 19, 2004, addressing the Department of Labor's March 19, 2004 decision, *Ms. Newsome is of a firm belief that Mr. Jones knowingly submitted such decision with knowledge that the information contained therein* ***is false*** *and said decision* ***is not*** *substantiated by any factual documentation that can support the decision rendered by the agency.*

Ms. Newsome further believes that such rendering of a frivolous decision has been done for the purposes of depriving her equal protection of the laws and due process of laws. Rights secured under the United States Constitution. Furthermore, Ms.

Newsome believe that such actions by Mr. Jones and his agency have been done as efforts in forcing her to bring a private lawsuit against MMS. If necessary, and the laws permit, it is her desire to receive a ruling on this matter from the Administrative Review Board first, prior to pursuing legal actions against the Department of Labor under the Administrative Procedure Act through the Judiciary. *If Mr. Jones' decision/ruling is indeed erroneous, that a* ***Ruling/Decision*** *from the Administrative Review Board* ***be entered to correct any and all errors*** *by the Jackson, Mississippi – Wage and Hour Division.*

> The Supreme Court has not seriously ruled on the issue but recent decisions lend significant support to the theory that administrative agency decisions are liberally reviewable in federal courts. *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 91 S.Ct. 402, 28 L.Ed.2d 136 (1971); *Barlow v. Collins*, 397 U.S. 159, 90 S.Ct. 832, 25 L.Ed.2d 192 (1970)
>
> By its terms, the *Administrative Procedure Act* **authorizes** judicial review of agency actions, even though the legal proceeding challenging such action is brought against the United States, provided that the relief sought is other than monetary damages. 5 U.S.C. §702, *Lawrence v. United States*, 631 F.Supp. 631, 637-638 (E.D. P.A. 1982).

Thus, it appears, as a matter of law, it is only fair for Ms. Newsome to bring this matter before the Administrative Review Board for review and provide said Board an opportunity to correct the errors in the decision/ruling of the Wage and Hour Division – Jackson, Mississippi office provided on March 19, 2004, by Mr. Jones, before seeking any legal action through the judiciary.

In Ms. Newsome's letter of March 19, 2004, to Mr. Jones, she requested that he provide:

1) Certificate/Acknowledgment Statement signed by you and notarized (e.g., the Acknowledgment/Oath should state, but is not limited to, your acknowledgment and review of the entire record and all documentation submitted to the wage and hours division, and according to federal and state laws, you find that the findings of the Report/Decision to be true).

2) Certificate/Acknowledgment Statement signed by person who was assigned this case and rendered a decision. This document is to be notarized. (NOTE: This request is

important - In conversation with Mr. Owens, he acknowledged the firm's ***averaging*** of hours and that such method is in compliance with FLSA).

3) Certified copy of the record in regards to this matter.

See **Exhibit 3,** attached hereto. *In Ms. Newsome's March 19, 2004 conversation with Mr. Jones, he advised her that he would not provide her with the requested statement. Thus, it may be implied from said refusal, Mr. Jones' clear knowledge that his decision on behalf of the agency* ***is false, misleading and erroneous*** *and issued for the purpose of obstructing justice, depriving me equal protection of the laws and due process of laws. Rights secured under the United States Constitution.*

* * * * *

CONCLUSION

* * * * *

For the reasons and evidence presented herein and attachment of supporting documents, Vogel D. Newsome, prays that the Administrative Review Board address the issues raised in this instant Request and Notice, and provide a response thereto. That the Administrative Review Board investigate the actions of Wage and Hour Division's handling of this Charge and if it find any violations, administer and/or initiate the proper proceedings to correct such wrongs. That the Administrative Review Board correct all errors in the March 19, 2004, decision entered by the United States Department of Labor – Wage and Hour Division in the Jackson, Mississippi office and/or issue the appropriate ruling with instructions for the Wage and Hour Division in the Jackson, Mississippi office to do so. That upon completion of its review, that the Administrative Review Board require that Mitchell, McNutt & Sams, P.A. comply with the Fair Labor Standards Act.

Thank your for your time and consideration to the instant Request for Review. Should you have further questions, comments, etc. requiring my assistance, please do not hesitate to contact me.

Respectfully submitted,

Vogel Newsome

Vogel Newsome
Post Office Box 31265
Jackson, Mississippi 39286
(601) 362-4910

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Judge
DONNA M. BARNES
District 1, Position 2

Court of Appeals Judge Donna M. Barnes of Tupelo was appointed by Governor Haley Barbour on July 26, 2004, to fill the position created by the retirement of former Court of Appeals Chief Judge Roger H. McMillin Jr. In November 2006 Judge Barnes was elected unopposed to serve the remaining four years of this term.

Born in Natchez, Judge Barnes earned a Bachelor of Arts degree in 1982 from the University of Mississippi, summa cum laude, with majors in classical civilizations and English.

Judge Barnes obtained her Juris Doctorate from the University of Mississippi School of Law, where she graduated magna cum laude in 1985. She was a member of Phi Delta Phi legal fraternity and a research editor of Mississippi Law Journal. Judge Barnes is a member of the University of Mississippi Lamar Order.

For more than 18 years, Judge Barnes practiced law with Mitchell, McNutt and Sams in Tupelo with concentrations in appellate practice, real estate, health care, employment discrimination, section 1983 litigation and professional liability defense.

In 1996, she took sabbatical to study law at the University of Cambridge, where she was one of three American students in the LL.M. program which that year admitted 152 attorneys from 48 countries. Her studies included international commercial litigation, comparative public law, international human rights, and law and practice of civil liberties. A member of Magdalene College, Judge Barnes earned her Master of Law from the University of Cambridge in 1997.

Admitted to the practice of law in Mississippi in 1985, Judge Barnes is qualified to practice before the United States Supreme Court, the United States Court of Appeals for the Fifth Circuit, the United States District Courts for the Northern and Southern Districts of Mississippi, and all Mississippi state courts. She is a member of the Fifth Circuit and American Bar Associations, the Mississippi Bar and the Lee County Bar Association. She has served as president of both the Lee County Bar Association and the Lee County Young Lawyers Association.

Judge Barnes is a graduate of Leadership Lee County, a member of the Tupelo Main Street Association "E-Club," and a

Exhibit "62"

communicant of All Saints Episcopal Church in Tupelo.

MISSISSIPPI CODE OF 1972

As Amended

SEC. 97-9-59. Perjury; definition.

Every person who shall wilfully and corruptly swear, testify, or affirm falsely to any material matter under any oath, affirmation, or declaration legally administered in any matter, cause, or proceeding pending in any court of law or equity, or before any officer thereof, or in any case where an oath or affirmation is required by law or is necessary for the prosecution or defense of any private right or for the ends of public justice, or in any matter or proceeding before any tribunal or officer created by the Constitution or by law, or where any oath may be lawfully required by any judicial, executive, or administrative officer, shall be guilty of perjury, and shall not thereafter be received as a witness to be sworn in any matter or cause whatever, until the judgment against him be reversed.

SOURCES: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 5(1); 1857, ch. 64, art. 204; 1871, Sec. 2660; 1880, Sec. 2921; 1892, Sec. 1243; 1906, Sec. 1318; Hemingway's 1917, Sec. 1051; 1930, Sec. 1082; 1942, Sec. 2315.

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EXHIBIT "64"

8/15/2007

MISSISSIPPI CODE OF 1972

As Amended

SEC. 97-9-61. Perjury; penalty.

Persons convicted of perjury shall be punished by imprisonment in the penitentiary as follows: For perjury committed on the trial of any indictment for a capital offense or for any other felony, for a term not less than ten years; for perjury committed on any other judicial trial or inquiry, or in any other case, for a term not exceeding ten years.

SOURCES: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 5(2); 1857, ch. 64, art. 205; 1871, Sec. 2661; 1880, Sec. 2922; 1892, Sec. 1244; 1906, Sec. 1319; Hemingway's 1917, Sec. 1052; 1930, Sec. 1083; 1942, Sec. 2316.

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EXHIBIT "56"

8/15/2007

Records Authentication Certificate — U.S. Department of Labor

Section A. Legal Custodian

I HEREBY ATTEST, That the attached copy or copies of each document listed below is a true copy of a document in the official custody of the Department of Labor.

The attached letter dated February 25, 2005, transmitting information concerning Mitchell, McNutt & Sams, PC and the Four hundred seventeen (417) pages herewith are true and correct documents contained in an official file of the United States Department of Labor, Wage and Hour Division of which I am the custodian of records.

Signature and Official Title	Agency and Office	Date
Carolyn H. Riddle Regional Operations Manager	U.S. Department of Labor Wage and Hour Division	February 25, 2005

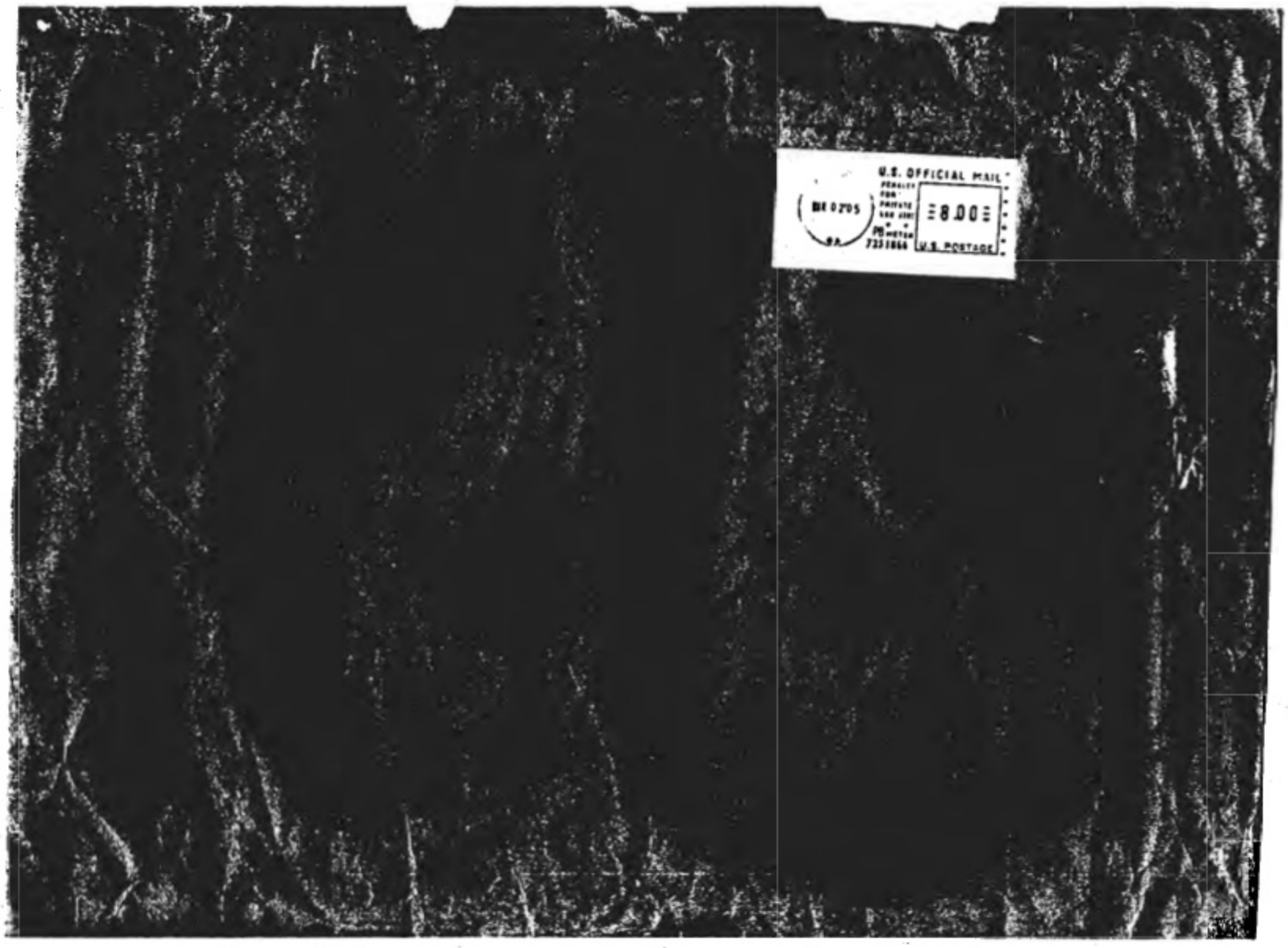
Section B. Authentication Officer

I HEREBY CERTIFY, That Carolyn H. Riddle who signed the foregoing attestation, is now and was at the time of signing (title) Regional Operations Manager and has legal custody of the official records of the United States Department of Labor therein attested and that full faith and credit should be given to his/her act as such.

IN WITNESS WHEREOF, I Cindy L. Brown duly designated by the Secretary of Labor as Authentication Officer of the Department of Labor, have here-unto subscribed my name and caused the seal of the Department of Labor to be affixed this 1st day of March 2005.

Authentication Officer
Department of Labor

EXHIBIT "69"


U.S. OFFICIAL MAIL
PENALTY FOR PRIVATE USE
$8.00
U.S. POSTAGE

[redacted]utt & Sams, PA
[redacted]1387893

FLSA NARRATIVE REPORT

Ms Newsome was interviewed (Exhibit B-3) during the course of this investigation. This supplemented her 26 page "Amended Retaliation Complaint"

Evidence: Interviews of Supervisor Robert Gordon, Attorney Mike Farrell, and Secretary, Ladye Margaret Townsend revealed that Ms Newsome had been rebellious and insubordinate in job duties assigned to her from the start of her employment.

EX 7D 8D 8E 10

[redacted] interview (Exhibit [redacted]) stated that every since Ms Newsome was hired she been looking for a way to get fired to pursue a law suit. She further confirmed the event in which the baseball cap was worn and supervisor Gordon requested Ms Newsome to remove it and she was insubordinate. (Exhibit D-11…D-11-a) After this incident Ms Newsome began working on whether she was paid properly. According to [redacted], Newsome spent hours on research on this matter. She further confirmed that the firm did all they could to alleviate any concerns Ms Newsome had about by being paid properly under FLSA. (Exhibit D-8…D-8-h)

[redacted] Newsome disagreed with Attorney Farrell and told Cochanuer and Townsend she was going to contact Wage Hour. [redacted] didn't know if Newsome did on not because nothing came of it. [redacted] further confirmed other events of insubordination.
(Exhibit [redacted])

[redacted]

FLSA NARRATIVE REPORT

[redacted]

Further action:

[redacted]

875

(Note) During the course of this investigation, District Director ("DD") Billy Jones retired from the department. Regional Administrator McKeon assigned Assistant District Director ("ADD") Oliver Peebles as Acting DD for the Gulf Coast District. DD Peebles has been advised through all actions of this case, and all of his instructions have been followed.

I recommend that a similar letter be sent to:

Attorney Sandy Sams, Partner
Mitchell, McNutt & Sams, P.A.
105 South Front Street
P.O. Box 7120
Tupelo, MS 38802-7120

with copies to:

Attorney Jim Allen, Executive Director
Mitchell, McNutt & Sams, P.A.
105 South Front Street
P.O. Box 7120
Tupelo, MS 38802-7120

TRANSCRIPT: EXCERPTS FROM ALLEN'S AND GORDON'S EXAMINATION DURING UNEMPLOYMENT COMPENSATION HEARING: *McArn v. Allied Bruce-Terminix Co.*, Inc., 626 So.2d 603 (Miss.,1993) - Whether or not there is written contract, there should be public policy exceptions to employment-at-will doctrine for employee who refuses to participate in illegal act or employee who reports illegal act of his employer; these exceptions will apply even where there is "privately made law" governing employment relationship, or where illegal activity either declined by employee or reported by him affects third parties among general public, though they are not parties to lawsuit. (n. 3) Employer's alleged statement to Employment Security Commission that employee was terminated for a "bad attitude" was privileged and could not be basis for libel suit, absent proof that such statements were false or maliciously made.[1]

THE TESTIMONY/INFORMATION IS A MATTER OF PUBLIC RECORD AND CAN BE FOUND IN HINDS COUNTY CIRCUIT COURT RECORDS.

Newsome	56	2-4	Okay, so my December 1, 2004 e-mail in regards to harassment incident, was not out of the ordinary. I have submitted complaints in the past in regards to Mr. Gordon's behavior, is that correct?
Allen	56	5	You have.
Newsome	56	6-8	At any time during my employment, did I mention to you that I felt that Mr. Gordon's treatment, or his behavior, and conduct in regards to me was hostile?
Allen	56	9	You did.
Newsome	56	10	Okay, was this before your June 7th Memorandum or after?
Allen	56	11	I don't recall.
Newsome	56	16-18	And the complaint that I submitted to OSHA, OSHA contacted the firm, you were to respond, if I'm not mistaken, by June 8, 2004. Is that correct?

---

[1] [3] McArn argues that the Mississippi Employment Security Commission was falsely told that he was terminated for a bad attitude and not told the true reason for his firing. McArn argues that Miss.Code Ann. § 71-5-131 (1972) permits a claim for defamation whenever the employer makes statements to the Commission which are "false in fact and maliciously ... **made for the purpose of causing a denial of benefits**."

There is no question but that Miss.Code Ann. § 71-5-131 provides that communications between an employer and the Commission are privileged and "when qualified privilege is established, statements or written communications are not actionable as slanderous or libelous **absent bad faith or malice** if the communications are limited to those persons who have a legitimate and direct interest in the subject matter." *Benson v. Hall*, 339 So.2d 570, 573 (Miss.1976).

In his complaint, McArn charged that Terminix maliciously defamed him before the Mississippi Employment Security Commission by stating he was fired for a "bad attitude." At trial, McArn testified that Terminix's contention that he was insubordinate was false. That is the extent of McArn's evidence of defamation.

EXHIBIT "59"

Allen	56	19-20	I don't know the exact date. We did respond within the time limits they asked us to.
Newsome	57	1-4	Okay, the date of that Memorandum . . .was June 7, 2004, the response, if I'm not mistaken, because like I said, I wasn't aware this was coming up, was due on June 8, 2004. That e-mail or that Memorandum came out the day prior. Did that have anything to do?
Allen	57	5-6	Absolutely not, that's why I stated in here, you could do all you wanted about, with, with agencies.
Newsome	57	7-10	But also in regards to the complaints that I had submitted to the firm, have I ever submitted any complaints of harassment, discrimination, or anything to the attention of Mitchell, McNutt & Sams in regards to Bob Gordon?
Allen	57	11	Discrimination, harassment, yes, you've used that word several times.
Newsome	57	12-14	Okay, and did I ever mention to you that I felt that I was discriminated or either in the handling of my complaints being discriminative in any nature?
Allen	57	15-16	You asked me to follow through with going to the Board, is that what you're referring to?
Newsome	57	17-20	No, I'm asking did you ever receive any e-mail correspondence from me in regards to complaints I submitted to the firm, that I felt I was being subjected to certain treatment?
Allen	57	20	Discriminatory.
Newsome	58	1	Discriminative treatment?
Allen	58	2	You're, I believe you sent me one like that, yes.
Newsome	58	3-5	Okay, so you were, so Mitchell, McNutt & Sams was made aware prior to November 30th on several occasions that I had filed complaints in regards to Mr. Gordon's behavior?
Allen	58	6	Yes.
Newsome	58	7-9	Did Mitchell, McNutt & Sams at any time prior to November 30, 2004 submit in writing to me, written responses to my complaints in regards to Mr. Gordon's behavior?

Allen	58	10-12	Let's see, we, we talked about it at the Board, and talked to Mr. Gordon about it, and I'm trying to think if, what happened from that point forward. I don't recall if we sent anything to you, if I did.
Newsome	58	13-15	Okay, so I can, it, it is your testimony that I submitted several complaints, but the firm never responded to me in writing in regards to my complaints on Mr. Gordon's behavior.
Allen	58	16	I responded back to you.
Newsome	58	17	In regards to Mr. Gordon's behavior?
Allen	58		Uh hum.
Newsome	58	17-18	Do you have any documentation?
Allen	58	19-20	Oh, I tried, I may have some e-mails that we had through correspondence commenting back on.
Newsome	59	1-3	Okay, did Mr. Gordon ever receive an elaborate e-mail or Memorandum such as. . . that you forwarded to me in regards to the complaints I submitted in regards to him?
Allen	59	4	Did he receive one?
Newsome	59	5-9	Did Mr. Gordon, I submitted a complaint in regards to harassment or discrimination like I said, I don't' have them all, but I submitted my complaints to the firm in regards to Mitchell, McNutt & Sams conduct and behavior as well as Mr. Gordon, did you ever follow up with an e-mail or memorandum as you June 7, 2004?
Allen	59	10	To Mr. Gordon?
Newsome	59	11	To Mr. Gordon?
Allen	59	12	No.
Newsome	59	13-14	So Mitchell, McNutt & Sams did nothing to deter or discourage Mr. Gordon's behavior?
Allen	59	15-16	I don't know if there was, there was some discussions with, that, that we had.

Another example:

Newsome	144	19-20	Yes, just a moment. It was the incident that I went out to lunch with Attorney Mike Farrell and Ladye Margaret?
Gordon	146	7-13	She was gone for, what to me was an inordinate of the time to get something to pick up, to pick something up to bring it back. My recollection is that she was gone approximately forty-five minutes or so, and then she returned and at that time I criticized her for having gone and eaten out when I had told her that she needed to work through the lunch hour, and if she was going to get something to eat, go get it, and bring it back.
Newsome	146	14-15	So you said it was about forty-five minutes. For the record, can you explain your conduct when I did return, your behavior?
Newsome	147	1-2	So would you say your behavior, for instance stomping around and slamming the door is acceptable?
Gordon	147	3-4	I don't know that I stomped around and slammed the door, but I, yes, I was very upset.
Newsome	147	5	Okay, would you say you were hostile?
Gordon	147	6	Yes.
Newsome	147	8-9	Were you aware that your behavior was noticed by other employees at Mitchell, McNutt & Sams?
Gordon	147	10	Yes.
Newsome	147	11	Are you aware that I reported that behavior to Mr. Allen?
Gordon	147	12	Sitting here right now, I don't, I do not recall being aware of that.
Newsome	148	1-2	You, were you aware that when I went to lunch, that I was not driving, that I did go with Mr. Farrell and Ladye Margaret?
Gordon	148	3-4	You told me that when you returned, you did not tell me that before you were going.

Newsome	148	5-6	Prior to leaving. Were you aware that the lunch break was only about probably thirty-five minutes?
Gordon	148	7	It occurred, it appeared to me it was around forty-five minutes.
Newsome	148	16-17	Did that thirty-five minutes, or if you say forty-five minutes, did that preclude or prevent you from getting that Pleading filed in time?
Gordon	148	18-20	We got the Pleading filed on that day, but while you were out, a revision or revisions to that Pleading were sitting at your desk and not being done.
Newsome	149	14-16	And are you aware that your conduct affected the work of another attorney, who was wondering whether or not you had calmed down that day after that particular incident?
Gordon	149	17	No.
Newsome	150	2	So Mr. Gordon, you would say your conduct was hostile?
Gordon	150	3	That's what I, yes, I said that.
Newsome	150	4-5	Did Mitchell, McNutt & Sams ever notify you of your conduct of being you know, you being a hostile employee?
Gordon	150	6	No.
Newsome	150	13-14	Are you aware that I have, that I submitted complaints in regards to your conduct to Mitchell, McNutt & Sams?
Gordon	150	15	You have submitted complaints or e-mails alleging harassment.

A Yes.

Q Okay, so my December 1, 2004 e-mail in regards to harassment incident, was not out of the ordinary. I have submitted complaints in the past in regards to Mr. Gordon's behavior, is that correct?

A You have.

Q At any time during my employment, did I mention to you that I felt that Mr. Gordon's treatment, or his behavior, and conduct in regards to me was hostile?

A You did.

Q Okay, was this before your June 7th Memorandum or after?

A I don't recall.

Q "Employer Exhibit #9," the one I objected to, the June 7, 2004 Memorandum, you state that in that Memorandum, just paraphrasing because I don't have a copy of it before me, in regards to filing complaints with agencies, you mentioned also in your testimony something about OSHA. And the complaint that I submitted to OSHA, OSHA contacted the firm, you were to respond, if I'm not mistaken, by June 8, 2004. Is that correct?

A I don't know the exact date. We did respond within the time limits that they asked us to.

Q Okay, the date of that Memorandum in "Employer Exhibit #9" was June 7, 2004, the response, if I'm not mistaken, because like I said, I wasn't aware this was coming up, was due on June 8, 2004. That e-mail or that Memorandum came out the day prior. Did that have anything to do?

A Absolutely not, that's why I stated in here, you could do all you wanted about, with, with agencies.

Q But also in regards to the complaints that I had submitted to the firm, have I ever submitted any complaints of harassment, discrimination, or anything to the attention of Mitchell, McNutt & Sams in regards to Bob Gordon?

A Discrimination, harassment, yes, you've used that word several times.

Q Okay, and did I ever mention to you that I felt that I was discriminated or either in the handling of my complaints being discriminative in any nature?

A You asked me to follow through with going to the Board, is that what you're referring to?

Q No, I'm asking, did you ever receive any e-mail correspondence from me in regards to complaints I submitted to the firm, that I felt I was being subjected to certain treatment?

A Discriminatory.

Q Discriminative treatment?

A You're, I believe you sent me one like that, yes.

Q Okay, so you were, so Mitchell, McNutt & Sams was made aware prior to November 30th on several occasions that I had filed complaints in regards to Mr. Gordon's behavior?

A Yes.

Q Did Mitchell, McNutt & Sams at any time prior to November 30, 2004 submit in writing to me, written responses to my complaints in regards to Mr. Gordon's behavior?

A Let's see, we, we talked about it at the Board, and talked to Mr. Gordon about it, and I'm trying to think if, what happened from that point forward. I don't recall if we sent anything to you, if I did.

Q Okay, so I can, it, it is your testimony that I submitted several complaints, but the firm never responded to me in writing in regards to my complaints on Mr. Gordon's behavior.

A I responded back to you. Allen Linhum

Q In regards to Mr. Gordon's behavior? Do you have any documentation?

A Oh, I tried, I may have some e-mails that we had through correspondence commenting back on.

Q Okay, did Mr. Gordon ever receive an elaborate e-mail or Memorandum such as "Employer Exhibit #9" that you forwarded to me in regards to the complaints I submitted in regards to him?

A Did he receive one?

Q Did Mr. Gordon, I submitted a complaint in regards to harassment or discrimination like I said, I don't have them all, but when I submitted my complaints to the firm in regards to Mitchell, McNutt & Sams conduct and behavior as well as Mr. Gordon, did you all ever follow up with an e-mail or memorandum as your June 7, 2004?

A To Mr. Gordon?

Q To Mr. Gordon?

A No.

Q So Mitchell, McNutt & Sams did nothing to deter or discourage Mr. Gordon's behavior?

A I don't know if there was, there was some discussions with, that, that we had.

Q May I hold "Employer Exhibit #5?" I would like to look at, looking at 104 Business Ethics and Conduct. According to the information provided to the Unemployment Commission in regard to the false you know, my accusation of accusing Bob of false information, if indeed that information is

Referee: For the record I'm going to call this "Claimant Exhibit #5." It is objected to on relevancy and authenticity. Now this is signed by a Jane Hedglin?

Q Yes.

Referee: She works for Staffers?

Q That's correct. It's one of the agencies I'm registered with.

Referee: I'll make a copy of that, and give that back to you as well.

Q Okay.

Referee: Any other questions for?

Q Yes, I do, because the, like I said, at, at question here is that I submitted in the e-mail to deflect from my own Performance Evaluation. And it's basically to establish the accuracy, and the reason why I would not sign. During my employment, although it didn't come up, Mr. Gordon, I mean there was an incident in regards to your asking me to come, to interrupt my lunch and return to work on a pleading that you needed to get that day. Is that correct?

A Which incident, what, can you be more specific as to when you're referring to?

Q Yes, just a moment. It was the incident that I went out to lunch with Attorney Mike Farrell and Ladye Margaret?

anything to eat, but if you're going to get something to eat, go get it, and bring it back, and eat it at your desk when you have time. So that we can continue working on that Pleading. She objected. I told her it's just going to be necessary to do, because we've got to be sure we get our Pleading out that day. And she then told me that she's leaving going with Mike Farrell and Ladye Margaret Townsend to get something to eat, and would be bringing it back, and I said that's fine. She was gone for, what to me was an inordinate of the time to get something to pick up, to pick something up to bring it back. My recollection is that she was gone approximately forty-five minutes or so, and then she returned and at that time I criticized her for having gone and eaten out when I had told her that she needed to work through the lunch hour, and if she was going to get something to eat, go get it, and bring it back.

Q So you said it was about forty-five minutes. For the record, can you explain your conduct when I did return, your behavior?

A Because you had acted in a defiant and insubordinate manner, and going out, in my, in my judgment, in going out to get lunch, and eating out when I told you you needed you needed to work through the lunch hour, and or just needed to go out and get the lunch and bring it back and eat at your desk so we could complete work.

PLC

Q So would you say your behavior, for instance stomping around and slamming the door is acceptable?

A I don't know that I stomped around and slammed the door, but I, yes, I was very upset.

Q Okay, would you say you were hostile?

A Yes.

Q Okay, for the record, let me find which exhibit it is, just a minute, I would like to enter, because, let me ask this question. Were you aware that your behavior was noticed by other employees at Mitchell, McNutt & Sams?

A Yes.

Q Are you aware that I reported that behavior to Mr. Allen?

A Sitting here right now, I don't, I do not recall being aware of that.

Q Okay.

A I, I may.

Q So Mr. Allen, did I make you aware of that submitted your conduct, that incident rather, that incident to his attention?

A He may have, I just don't recall it right now. And if you did it by way of an e-mail, he may have forwarded a copy of the e-mail to me. I just, just don't recall.

Q You, were you aware that when I went to lunch, that I was not driving, that I did go with Mr. Farrell and Ladye Margaret?

A You told me that when you returned, you did not tell me that before you were going.

Q Prior to leaving. Were you aware that the lunch break was only about, probably thirty-five minutes?

A It occurred, it appeared to me it was around forty-five minutes.

Q Okay, even if it were forty-five minutes, was I in violation of any of the policies in regards to meals, breaks, lunch, of Mitchell, McNutt & Sams?

A In my judgment, yes, because even though you do have an hour lunch break, that hours lunch, had taken that hour lunch is always subject to the needs of the work that, that, this is in the office, and the need to get the work out in a timely and proper manner , and so that on occasions when that does arise, yes, that lunch hour is subject to, to being taken early, or deferred, late shortened, or even missed all together.

Q Did that thirty-five minutes, or if you say forty-five minutes, did that preclude or prevent you from getting that Pleading filed in time?

A We got the Pleading filed on that day, but while you were out, a revision or revisions to that Pleading were sitting at your desk and not being done.

Q But I am entitled to a break, right?

A Subject to the demands of the workplace, yes.

Q At this time, I would like to, I do need a copy of this back to show that it was only thirty-five minute lunch, and we will look at your evaluation saying it was forty-five minutes.

Allen: That's my assistant.

Ardelean: Okay.

Referee: Any objection, Ms. Ardelean?

Ardelean: Relevancy.

Referee: This will be "Claimant Exhibit #6." It is an e-mail from Ms. Newsome to Rosonna Murray, and a copy to Jim Allen, TIMECLOCK, it is objected to in regards to relevance, and that is "Claimant Exhibit #6." Any other questions, Ms. Newsome?

Q Yes, I do. And are you aware that your conduct affected the work of another attorney, who was wondering whether or not you had calmed down that day after that particular incident?

A No.

Q At this time, I would like to enter this in regards to the e-mail that was sent in regards to Mr. Gordon's behavior that day.

Referee: Any objection to that, Ms. Ardelean?

Ardelean: I have an objection on relevancy.

Q So Mr. Gordon, you would say your conduct was hostile?

A That's what I, yes, I said that.

Q Did Mitchell, McNutt & Sams ever notify you of your conduct of being you know, you being a hostile towards an employee?

A No.

Q Were you aware that there were complaints submitted in regards to your conduct to Mitchell, McNutt & Sams?

Ardelean: Could you get to the point because I'm not sure what complaints you're referring to?

Q I, I'm asking, are you aware?

A By whom or, and of what?

Q Are you aware that I have, that I submitted complaints in regards to your conduct to Mitchell, McNutt & Sams?

A You have submitted complaints or e-mails alleging harassment.

Referee: Let me enter this document. This will be "Claimant Exhibit #7." It is objected to on relevance. It is a series of e-mails from Ms. Townsend to Ms. Vogel and back. Okay, that is "Claimant Exhibit #7" that's objected to regarding relevancy.

Q Okay, in regards, and this was about February 2004, for the record?

Date: Mon, 15 Oct 2007 11:29:30 -0700 (PDT)

From: "v newsome" <[redacted]> View Contact Details Add Mobile Alert

Subject: Re: CANCELLATION - Trial of 08/07/07 (Charges Brought by Constable Jon Lewis)

To: RReh[redacted]

CC: "Vogel Newsome" <[redacted]>

Mr. Rehfeldt:

This will confirm that I am in receipt of your 2-Page Fax of 10/15/07 regarding "Abstract of Court Record."

One question I have is whether or not there is a criminal record on me? If so, I am requesting that this information be EXPUNGED. Will this step be required? Because it appears from the ruling, there is still a record - in which I am not pleased with. Please clarify.

Sincerely,
V. Newsome

RReh[redacted] wrote:

> I have faxed to your fax number a copy of the abstract from the Court on both of your criminal charges showing that they were both remanded to the files last Friday. This concludes the criminal matter in Hinds County Justice Court and I thank you for allowing me to represent you. Please advise if the fax did not go through as I heard a message when I tried to fax.
>
> Sincerely,
>
> Richard Rehfeldt

EXHIBIT "58"

Date: Mon, 15 Oct 2007 06:43:33 -0700 (PDT)

From: "v newsome" <[redacted]> View Contact Details Add Mobile Alert

Subject: Re: CANCELLATION - Trial of 08/07/07 (Charges Brought by Constable Jon Lewis)

To: RReh[redacted]

CC: "Vogel Newsome" [redacted]

Looking forward to receiving this information.
In light of the Jena 6 situation, as I shared with you, it bothers me with my rights are violated. Also, concerns of my people who get attorneys who drop the ball and/or fail to communicate and their outcome is not the same as mine because they pay their attorney to represent them and then for whatever reason, the attorney fail to properly and adequately represent them - setting them up to become a part of the criminal system. The thing with me and as I begin to speak out, is that as myself, my people and I have repeatedly been subjected to the injustices rendered African-American. The sad thing is, I believe they are taken advantage of (some being sold out under the table) because of their lack of knowledge and the the trust they place into their attorney who does a poor job in that it is not their life at stake and fail to represent them adequately.

Yes, my story turned out for the best; however, what would have been the excuse given had it not - especially when it was clear that information was purposely withheld from me. How many of my people are locked up and or have been found guilty for failure to appear because the attorney did what you did.

It is sad and an issue I and my people must begin to address and expose as injustices are committed to set us up for the penitentiary. Yes, my story turned out for the best - but I believe it is due to the fact, that I didn't let my left hand know what my right hand was doing behind the scene because clearly it was obvious attempts were made to stack the deck and aid in finding me guilty as a result of "property" illegally taken and which I was illegally removed.

As I shared during our conversation in August, I am who I am. I have rights that people have died for and as attempts have been made to destroy my life. Believe it is due to the action that is being taken and exposing such corruption (as Jena 6 and mine) is what I believe played a part in Friday's outcome. There are a different group of people who simply are not being silent anymore - they are SPEAKING OUT.

Sincerely,
Vogel Newsome

RReh[redacted] wrote:

> Will send you a fax and call when I receive the information, hopefully Monday. I have a hearing on a Murder Charge first thing Monday morning so it may be Monday afternoon or Tuesday mid- day before I fax it to you. Hopefully my representation of you on these criminal charges will be over Monday and you can get this behind you once and for all. I know it has been a long time coming and I am just glad it has ended positive for you.
>
> Sincerely,
>
> Richard Rehfeldt

Date: Tue, 16 Oct 2007 10:52:52 -0700 (PDT)

From: "v newsome" <[redacted]> View Contact Details Add Mobile Alert

Subject: Re: CANCELLATION - Trial of 08/07/07 (Charges Brought by Constable Jon Lewis)

To: RReh[redacted]

CC: "Vogel Newsome" <[redacted]>

I would not known that expungment was a process had you not told me when I retained you. Neither did you mention that it would be additional $750.00 to do this - until now. This doesn't sound right. I will inquire of criminal lawyers as to whether or not this is ethical (especially when it is represented as a service and part of the process from the beginning of representation). In the meantime, please send me Financial Report as to the cost/fees and description of services thus far.

Thanks.

RReh[redacted] wrote:

> I can do the expungement if you want to hire me to do it. I do not do expungements unless paid to do so. The fee is $750.00. I did not contract with you to do an expungement but only to represent you on the criminal charges pending in Hinds County Justice Court when you hired me but advised you that once the case was resolved that you could seek an expungement under the statute.
>
> Richard Rehfeldt

Date: Tue, 16 Oct 2007 09:31:57 -0700 (PDT)

From: "v newsome" <[redacted]> View Contact Details Add Mobile Alert

Subject: Re: CANCELLATION - Trial of 08/07/07 (Charges Brought by Constable Jon Lewis)

To: RReh[redacted]

CC: "Vogel Newsome" <[redacted]>

I'm confused and need clarification. The expungement was a matter you said you would handle when matter is dismissed. Why would another attorney be needed? Is this not what you advised me you would do as my attorney. I'm beginning to really get concerned as to what is going on and need you to be upfront with me. I sure there were those who were looking for a conviction and am aware of efforts taken to unlawfully obtain it and not get it. The arrest was unlawful, the action was dismissed (according to you). So help me out here and let me know what I am missing.

Thanks.

RReh[redacted] wrote:

> There is a record of your arrest and affidavits in the file and also in the computers of the Hinds County Sheriff's department and there could be a computer record in NCIC and the FBI could have a computer record of your arrest. Expungement is available if you wish to file a Motion for Expungement in the Hinds County Justice Court and if you wish you may retain an attorney to do it as there are some steps you need to take that only an attorney would know to do. It usually takes a month or two before it is completed but knowing Justice Court it may take a little longer but the Statute is clear that Expungement is authorized in these matters if the Court approves of expunging the arrest, affidavits etc. UNDER SECTION 99-15-57 of the Mississippi Code Annotated 1972 as amended. I do not know if there is a filing fee that the Court charges to do the Motion to Expunge and the Order would have to be prepared and signed off on by the County Attorney for Hinds County if the Court approves the Motion.
>
> Richard

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Date: Tue, 16 Oct 2007 12:35:50 -0700 (PDT)

From: "v newsome" <[redacted]> View Contact Details Add Mobile Alert

Subject: Fwd: Re: CANCELLATION - Trial of 08/07/07 (Charges Brought by Constable Jon Lewis)

To: "Vogel Newsome" <[redacted]>

CC: [redacted]Newsome" <[redacted]>

Note: forwarded message attached.

Forwarded Message [Download File]

Date: Tue, 16 Oct 2007 12:26:47 -0700 (PDT)

From: "v newsome" <[redacted]>

Subject: Re: CANCELLATION - Trial of 08/07/07 (Charges Brought by Constable Jon Lewis)

To: RReh[redacted]

HTML Attachment [Scan and Save to Computer]

Thank you for this information. As I advised, I will check into this. I will correspond with you through the mail and/or facsimile. Your sudden change in attitude, deliberate WITHHOLDING OF PERTINENT INFORMATION regarding trial and now refusal to handle this matter until conclusion as orginally advised you would (which I believe one may find is fair and perhaps indeed one of the processes in the criminal matter in handling the client's case ESPECIALLY WHEN CHARGES HAVE BEEN DISMISSED). While I realize that you wanted to prepare me for a finding of "GUILTY" and efforts by those who wanted the same finding and were disappointed when it did not happen, it did not alleviate you in your representation (my employment of your services) in the handling of this matter until conclusion. My concerns simply is the fact you may be attempting to bail out (without good cause and/or justification) and whether such conduct is ethical.

NEVERTHELESS, please provide me with the requested information ASAP and until I get a clarification as to what is required and/or that I am entitled to under the ramnifcation of this matter such a conclusion (with unresolved issues)

does not seem appropriate.

Sincerely,

RReh [redacted] wrote:

> I never advised you that I would do an expungement once your case was concluded without being retained to do so. You hired me to represent you in
> Hinds County Justice Court on a criminal matter which I did and your case has been resolved. If you want the record of your arrest expunged you can file a motion for expungement or you can hire me or someone else to do it. OTHERWISE MY REPRESENTATION OF YOU IS OVER. I do not want any further e-mails from you. If you wish to correspond please do so through the mail or phone but I must advise that my representation of you is over unless you wish for me to represent you on an expungement for my quoted fee of $750.00 which is due in advance of the filing plus any filing fee due the Court.
>
> Sincerely,
>
> Richard Rehfeldt
>
> ---
>
>

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From: RReh[redacted] View Contact Details Add Mobile Alert

Date: Tue, 16 Oct 2007 14:24:46 EDT

Subject: Re: CANCELLATION - Trial of 08/07/07 (Charges Brought by Constable Jon Lewis)

To: [redacted]

I never advised you that I would do an expungement once your case was concluded without being retained to do so. You hired me to represent you in Hinds County Justice Court on a criminal matter which I did and your case has been resolved. If you want the record of your arrest expunged you can file a motion for expungement or you can hire me or someone else to do it. OTHERWISE MY REPRESENTATION OF YOU IS OVER. I do not want any further e-mails from you. If you wish to correspond please do so through the mail or phone but I must advise that my representation of you is over unless you wish for me to represent you on an expungement for my quoted fee of $750.00 which is due in advance of the filing plus any filing fee due the Court.

Sincerely,

Richard Rehfeldt

VOGEL NEWSOME

Post Office Box 14731
Cincinnati, Ohio 45250
Phone: 601/885-9536 or 513/680-2922

October 1, 2007

VIA USPS – EXPRESS MAIL
Carlton L. Peeples
Chief, Civil Rights Unit
Criminal Investigative Division
U.S. Department of Justice
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, DC 20535-001

RE: CONCERNS OF FBI COVER-UP OF CRIMINAL ACTIONS
STATUS OF FINDINGS REGARDING: JUNE 26, 2006 COMPLAINT FILED WITH FBI

Dear Mr. Peeples:

This will confirm that I am in receipt of your letter dated September 5, 2007 (received on September 29, 2007 – 24 days later ?), a copy of which is attached for your review.

I am contacting you in that I am disturbed by the FBI's *blatant refusal* to address the issues raised in my June 26, 2006 Complaint filed with the FBI. A copy of which is attached for your review (FBI's review AGAIN). **PLEASE TAKE NOTICE,** I am requesting that the FBI address/provide a response to the issues raised in my Complaint filed with its agency. I am also requesting a response to my August 22, 2007 letter (attached for your review) as well. In my August 16, 2007 letter I provided the agency with additional information to aid them in their investigation regarding violations rendered me under Title 18 USC § 241 Conspiracy Against Rights, Title 18 USC § 242 Deprivation of Rights Under Color of Law, Title 42 USC § 3631 Criminal Interference With Right to Fair Housing, Title 42 USC § 14141 Pattern and Practice (which was not clear to me). Will you please provide a response to this letter. **PLEASE TAKE NOTICE** – *That through this correspondence, I am notifying the FBI that I have serious concerns that they may be attempting to cover-up the criminal acts of Constable Jon Lewis, Judge William Skinner and others.*

In light of the **"Jena 6"** incident, for those who are obtaining a copy of this letter and attachments (through mail, e-mails, etc. these are documents I provided the FBI and/or had access to) in my pursuit and our coming together to spread the word, here are some of the facts:

1. In 1972 the FBI embarked on a raid on the Republic of New Africa. During this raid Lt. William Louis Skinner (of the Jackson Police Department) was killed. There is a "William L. Skinner Training Academy" named after this officer. For those of you who

Exhibit "57"

do not know this officer's son, Judge William Skinner, is presently serving as a Judge in the Hinds County Court – in Jackson, Mississippi. The FBI already has information that I am providing those receiving a copy of this. In information you will find documentation which I believe raises serious concerns, because I believe Judge Skinner has elected to take this avenue to mask the "REVENGE" he has and will continue to subject African-Americans too as a result of his father's death. I believe in light of the **"Jena 6"** situation and my arrest on last year – February 14, 2006, you will find from the evidence provided the FBI, just how this Judge has been allowed to oppress African-Americans who are college educated and articulate or simply ordinary African-American citizens. His recent attack I believe was participating in the termination of an employee because the person accepted service of process on the complaint filed by me wherein he is a Defendant. The information provided in documents provided the FBI will show how Judge Skinner used his position (usurped/abuse his authority) to attack me from the bench because of my position. Not only that, but because of my ability to produce documents (type-written documents/pleading) on my behalf. The documents basically speak for themselves and believe me, the FBI has this information and/or have access to it as well as and have been provided with sufficient information to locate anything they need.

It is also important to note that Judge Skinner and Constable Lewis may have perjured themselves in efforts of avoiding having to answer the civil lawsuit I filed against them. They deliberately and knowing provided false and misleading information in their Affidavits because they did not think I had enough sense to cover my tracks and take extra precautionary measures to assure proper service. (*Documents regarding this issue are in the documents attached striking the frivolous pleadings filed by Skinner's and Lewis' attorney – The FBI was provided with this information to aid them in their investigation*.)

To understand this situation better, one must understand that Judge Skinner appears to prey on the guilt the FBI must carry in regards to his father's death. Therefore, in any effort to protect him, it appears the FBI is not willing prosecute this matter on my behalf and correct the injustices complained of in the Complaint I filed with their agency and subsequent information provided in documents I submitted to their attention.

Here is my theory: The reason why, as you can see from Mr. Peeples letter dated September 5, 2007, the FBI is not doing anything, is because they are aware of unethical, illegal and unlawful actions of Judge Skinner. I believe one may conclude that the FBI's failure to investigate and correct the injustice rendered me – which is clearly within their jurisdiction (see the statutes provided above and attached documents from information from their website) is because Skinner is operating under their control or bidding. It appears the FBI allowing Judge Skinner to commit criminal acts against me and my people as repayment of his father's death. It also appears, the FBI is allowing Judge Skinner to use his judgeship to oppress me and other African-Americans.

With **"Jena 6"** as you can see, **(1)** the goal has been what it has always been, efforts to destroy our African-American men at an early age, **(2)** set them up for prison, **(3)** strip them of their *voting* rights, **(4)** accuse them of bogus crimes so that when they get out, they cannot go to *college* – efforts to force them to hustle on the street and of course wind back up in prison, etc. Look at our society today, the plight against our African-American men is so evident and the plight to destroy the African-American family. It has been a long standing issue that "White" America is intimidated by our African-American men. Since slavery and even presently – due to their own insecurities (and we as a culture/nation know what they are).

2. On February 14, 2006, in violation of my Civil Rights, I was unlawfully removed from my residence and placed under arrest. Judge Skinner's friend, Constable Jon Lewis, subjected me to unlawful/illegal arrest for exercising my rights and opposing the unlawful seizure of my apartment. My apartment was taken by force. During the time of my arrest, Jon Lewis removed my tape recording device (micro cassette recorder wherein I was recording the incident). In furtherance of violations of my civil rights, this officer committed theft, tampered with evidence, etc. All of which the FBI is fully aware of and has condoned – moreover, criminal acts which falls within their jurisdiction.

   Even the Justice Court Clerk had concerns of possible actions by Constable Lewis, "I refuse to be a part of his collection process," said Woods in her letter to County Administrator Anthony Brister. "I cannot imagine how many letters were mailed or payments received at his home address." Yes, something definitely is wrong with this picture. (For those receiving this information via e-mail and other sources, this can be found in the TOP STORY article ran on Constable Lewis in Mississippi. ***The FBI is also aware of this information and the conduct in question***).

3. So you ask, why have I been targeted, the attach documents (FBI already has) speaks for themselves. Not only that, you will see how "White" America as they are known to do, will come together to destroy one persons life. As you will find I am very outspoken and refuse to allow them to infringe upon my Civil Rights and the laws that they say are equally available to me (without discrimination – what a joke). I am providing this information so that you can follow my cases and see exactly how "White – Southern Justice" is rendered, rather than equal protection of the laws, due process of laws, and other right secured under the Civil Rights Act, U.S. Constitution, etc. I am too outspoken and do not allow them to intimidate me. From the evidence, you can see how those with money, power (Judges, attorneys, the courts, etc.) have all come together with a common goal in mind – to destroy the life of Vogel Newsome. She cannot be bought and she will not be silent, so the question is what do we do with this – (the "N" word). The "Jena 6" is simply an ongoing saga of hate crimes – which is also within the jurisdiction of the FBI, so let's see what they are going to do. See the information I am providing.

4. I have come under attack by an arsenal of attorneys in the defense of my civil lawsuit. Rather than "practice" the law, they are relying upon special favors from the judges assigned the case as well as the FBI (their commitment to Judge Skinner). To get a better understanding as to my character and work ethics, for those who are receiving a copy of this letter via e-mail, etc., I provide you with letter of references and other documents to support my work ethics/performance and the commendations received for such. This is important because from what I have had to endure, in desperate measures by attorneys, I have had to shut down avenues in which they have taken to attempt to assassinate my character, morals and values – moreover, efforts taken to destroy my life and get the "weak minded" individuals who do not know me nor has ever met me to form an ill opinion of me without cause. *Please note that the FBI has already been provided the information.*

It is also apparent that the FBI and "White" America thinks that **"Jena 6"** *will pass with time*. However, to their disappointment a new generation is emerging/embarking and saying "Enough of this" (for better words). The FBI has relied upon Jesse Jackson and their other informants way too long and he does not speak for the majority who are looking and will be moving for change.

In **"Jena 6"** when I heard about a *"White Tree"* I was appalled. Why, because I graduated from Utica High School in 1980 and from the time I was there, they had a "White" tree. I said nothing has changed. To me this is not only a slap in my face but those of my people. Also, a slap/spit in the face of the NAACP, Operation PUSH, and other civil rights groups that we have not been vocal and present enough. When the KKK can continue to do what they are doing, strategically placing their people in government, law firms and on the judicial bench, we have a problem and the FBI is not helping at all, but encouraging such practices. As you can see from my case – their time is far spent chasing down and prosecuting people like Michael Vick, while Constable Jon Lewis and Skinner are allowed to engage in criminal and/or illegal activities (hate crimes that are masked) themselves. However, as you can see from the FBI's September 5, 2007, they have elected to look the other way and clearly thought that I would not follow up with my previous request. With their September 5, 2007 letter they returned documents that I provided to support my Complaint – attempting to wash their hands and look the other way on the criminal conduct that is plaguing the South's Judicial System.

The FBI and "White" America simply thinks that "Jena 6" is just a phase we are going through and that they will overcome in such situations with time. However, we as a nation (African-Americans) are a FORCE to be reckoned with and are determined to move for change. No more of the "older generation" scared to trouble the water for fear of losing their jobs, etc. It's happening regardless (see from my experiences) in keeping silent; and, from my experience, you will find how "White" America definitely bans together to destroy one life. Look at my situation, look at the attorneys, judges, courts, etc. who have come together for a common cause – to destroy my life. One thing is true about their culture, they can go years without talking to

their mama, daddy, sisters, etc.; but when it comes to destroying the life of an African-American person, they set aside all differences to take this person or a group of them out.

From the attached documents, you will see why I am hated and despised (for being African-American, educated and articulate). Proud to say a graduate of what I believed to be the No. African-American University in the World – FLORIDA A & M UNIVERSITY. How many people would take the time to gather the evidence that I have and then have the FBI and others attempt to pretend like they are clueless as to what is going on. Here is some additional information regarding me for those who are also receiving a copy of this letter through other means available (mail, e-mail, etc.) – **PLEASE FEEL FREE TO PASS THIS MESSAGE AND THE INFORMATION YOU RECEIVE ON**:

1. For those who do not know, my great grandfather was shot and killed because he refused to give up his land (Read the story in my aunt's book – "You Don't Have To Be Broken – Naomi Brookin Story"). Has times changed in Mississippi, no. They unlawfully/illegally took my apartment from me and had no legal grounds or basis for doing so. They were provide with the laws, etc. to show they were in violation of the laws and my rights. However, the whites (landlord, judge, constable, etc.) proceeded anyway.

2. The Constable failed to serve Summons in compliance with Mississippi Laws and then falsified service of process. The Judge (William "Bill" Skinner) was aware of such corrupt practices. However, keep in mind that the FBI and Judge Skinner go back a long way and are connected and bonded through the death of Judge Skinner's father during the FBI raid in 1972 on the Republic of New Africa.

3. Look at the story of Carl Brandon (African-American male). This man lost his job, while he tried to go on with his life, the white attorney and others sought ways to keep him oppressed – following him from job-to-job. It appears from what I have read, "White" America was determined to keep this man oppressed and use their power and resources to destroy him. For instance, a few comments from the Board states:

> "I would put Carl Brandon as a model from my town. I think he was one of the more intellegent and well manners persons in the class. i cannot imagine this guy waking up one morning to decide that he want to destroy his life and others."
>
> "Some time a person try to walk away from a problem, but there are people in this world that want let them do that. This man had left his job and move on, but that was not good enough. They had to call his job and tell them what happened 9 years ago, and got this man fired. I hate that he

> let the devil take over him at the time, but I do understand. . . .I hope that we can learn something from this tragedy."
>
> "He had lost his job because someone said he had harassed them. He lost his reputation and the respect of some. When he tried to move on some vindictive, vicious persons went to his next job and scandalized him. He fought through every legal avenue available to him and found no justice."

(For those receiving copy of this letter, see document attached. I find that when I provide the website information, etc. for some mysterious reason, the article and/or information is removed - now I'm thinking because (as in this situation)). I pass the information on in that is supports my theory and allegations. "White" America wants to be slick and deceptive in their practices and whenever, they are exposed, they go to whatever measures to cover up their unlawful/illegal/unethical deeds. How we as a country are supposed to heal, come together and work together "EQUALLY" is definitely a question to be explored. Just another lie (through *fork-tongues*) they think that we are going to believe.

4. If one were to look at our country today, it is obvious that African-Americans are being represented in government jobs (City, State and Federal); however, when it comes to the private sector – open your eyes and see the oppression and the efforts by the FBI to prevent such businesses and organizations from going forth. However, they allow other countries and people of color to come over and set up their own businesses, etc. Giving them loans, etc. and when we seek to do the same, they set up an operation to set us up for failure (underhandedly using tools they think we are not aware of). Recognizing that we are force and a people destined for greatness – so whatever they can do to OPPRESS us they will. However, to their disappointment, we are coming together and speaking out and saying ENOUGH, is ENOUGH and we will not continue to take such injustices lying down. Giving us government jobs (City, State and Federal) and using it against us and as a means to strong arm those who oppose practices that are illegal. Even in that system (as with Carl Brandon), while they try to move on, they are stalked, harassed, intimidated, etc. until they cannot take it anymore and wind up incarcerated as designed by "White" America for our brothers. Taking another head of the family out. It is really sad. No more, no more. We are coming out.

So Mr. Peeples, please take the time to address the issues raised in my Complaint and subsequent pleadings and let me know whether the actions taken against me are within the jurisdiction of the FBI. *While you are aware of the lawsuit filed by me and the one filed by my attorney, as well as the **Prosecutor for the State of Mississippi joining with my criminal attorney (Richard Rehfeldt) to have the charges dropped against me** (copy of e-mail attached from my attorney confirming this – FBI already was provided a copy), it is important for those who are aware of Jena 6 situation to see just how justice is in the south – has not changed*, I am encouraging others

to follow my cases as well [United States District Court – Southern District of Mississippi, Jackson, **Case No. 3:07-cv-00099-TSL-LRA** (filed by me pro se) and the one with my attorney **3:07-cv-00560-WHB-LRA**]. Oh, forgot to mention for those who do not know, the law firm that is representing Judge Skinner, Constable Lewis, Hinds County and the Sheriff **is my former employer** (Page, Kruger & Holland). **Oh, and this law firm have people in key positions on the Board of the Mississippi Defense Lawyer Association (see attached – FBI have information).** They have already made attempts to have my attorney (Wanda Abioto – with a name like that, she may also be a target now) turn against me – they were successful with the first one (Brandon Dorsey, a young lawyer – advising me that he had to live there and feed his family) who was so desperate that he went before the court and lied to get permission to withdraw. My present attorney has **over 20 years** of legal experience and they are attempting to insult her, harass her, intimidate her, etc. Since they cannot get to me and have failed in all their efforts to intimidate me, they are looking to those who they think would sell me out for a buck. I'm also aware of the game they are attempting to play and projecting as the "*boy who cried wolf*"– but they can't get around the evidence (tape recordings, racially motivated documents, etc.) and the desperate acts they have committed against me in efforts of destroying my life (see documents provided – FBI was provided with same information or have access to same.

The FBI and "White" America takes advantage of people like me who try and abide by the laws and use the judicial system and other agencies available to them – when one pursues such actions "ALONE" they are ganged up on by "whites" with great financial resources, power (judges, attorneys, etc.) to destroy their lives. Let us continue to come together and say, NOT ANYMORE, we are uniting together and sticking together, you will not divide us.

Should you have questions or comments, please do not hesitate to contact me at **513/680-2922** or **(601) 885-9536.**

Sincerely,

Vogel Newsome

Vogel Newsome

cc: Media, etc. (with referenced enclosures – FBI was provided with documents and/or should have access to information)

DOCUMENTS ACCOMPANYING E-MAIL, ETC. IN SUPPORT OF OCTOBER 1, 2007 LETTER TO THE FBI

1. 06/26/06 FBI Complaint
2. 08/05/06 Letter to FBI (Letter only)
3. 06/24/07 Letter to FBI (Letter only)
4. 08/16/07 Letter to FBI (Letter only)
5. 08/22/07 Letter to FBI
6. FBI – Civil Rights Statute (Taken from FBI website)
7. 03/17/06 – Fax to Constable Jon Lewis (Request for Arrest Report, Return of Personal Property)
8. Mississippi Code § 97-9-125 (Tampering with Physical Evidence)
   Mississippi Code § 97-9-129 (Sentencing)
9. 08/09/07 E-mail from my Criminal Lawyer
10. Mississippi Defense Lawyer Association (Showing of former employer's attorneys serving as officers on the Board)
11. Republic of New Africa Article
12. William L. Skinner Article
13. Constable Jon Lewis Article
14. Newsome's – Letter of References, Documents Supporting Work Ethics and Computer Skills, etc.
15. Complaint – Filed in Federal Court
16. Motion To Strike – Hinds County/McMillan
17. Memorandum Brief Supporting Motion to Strike – Hinds County/McMillan
18. Motion To Strike – Spring Lake Apartments
19. Memorandum Brief Supporting Motion to Strike – Spring Lake Apartments
20. Motion to Strike – Jon Lewis/Judge Skinner
21. Memorandum Brief Supporting Motion to Strike – Jon Lewis/Judge Skinner

DunbarMonroe, PLLC

Attorneys at Law

G. Clark Monroe II

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www.dunbarmonroe.com

February 19, 2007

Wanda Abioto
2353 Syon
Memphis, TN 38119

Via Facsimile (901) 791-2248 and U.S. Mail
Also via abioto@hotmail.com

Re: ***Vogel Newsome v. Melody Crews, et. al.,*** Civil Action No. 3:07cv00560

Dear Ms. Abioto:

This letter concerns the case you purportedly filed against my clients Melody Crews and Dial Equities, Inc. asserting certain Fair Housing Act violations, among other things. I am attaching to this letter a letter from your client, Mrs. Newsome, to the Clerk of the United States District Court providing six (6) filings which *she signed* with her name over *your* signature block. I attach only the first four (4) of those filings. I note Vogel Newsome carbon copied you on the filings as well.

Vogel Newsome represented to the Court you were sick so she was making the filings for you. This implies, to me, that you have read and **approved** the content of those filings which defame and make unprofessional accusations against a siting United States Magistrate Judge. This is wholly unacceptable. I have called you today and yesterday about this and you have ignored me. I emailed you on February 14, 2008 and again today. You have failed to respond. I have also noted that you did not even sign the Complaint. **Rather it appears your client signed your name to the initial complaint. Do you even represent her?**

Therefore, please accept this letter as my final attempt to request that you either contact me and discuss this or make arrangements with the Court to withdraw these accusations and confirm your involvement as counsel for Ms. Newsome. If you fail to respond on or before Thursday, February 21, 2008 by 5:00 p.m. then I will consider your silence to be ratification of the attached filings and will advise the Court you have failed to dispute your involvement in these accusations. I also demand you sign the Complaint and all submitted motions of record to date.

I do not believe I can overstate to you how critical it is that you clear up this matter immediately. I look forward to your immediate response to me or via filings with the Court in this matter.

Cordially,

DunbarMonroe, PLLC

Clark Monroe

GCM/mfg
Enclosures
cc: Lanny Pace

EXHIBIT "56"

DUNBARMONROE, PLLC

ATTORNEYS AT LAW

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E-Mail:
gcmonroe@dunbarmonroe.com

Website:
www.dunbarmonroe.com

February 21, 2008

Wanda Abioto
2353 Syon
Memphis, TN 38119

Via Facsimile (901) 791-2248 and U.S. Mail
Also via abioto@hotmail.com

Re: ***Vogel Newsome v. Melody Crews, et. al.,*** Civil Action No. 3:07cv00560

Dear Ms. Abioto:

This confirms your call yesterday regarding my letter to you of February 19, 2008. In that call you confirmed to me that you authorized the filing of the complaint in this matter. You also advised you presently represent Mrs. Newsome and that you authorized Mrs. Newsome to sign your name to the initial Complaint and send it to the Court for filing on your behalf as her lawyer.

You also advised you did not know about the subsequent filings in this case made by Mrs. Newsome in which she made numerous accusations against United States Magistrate Judge Anderson. You have advised you do not endorse her statements made therein. You also advised that you would be filing a Notice of Withdrawal as counsel as a result of these actions.

As I expressed to you yesterday, we will not agree that you may withdraw as counsel unless you dismiss the entire lawsuit. Pursuant to the Local Rules for the Northern and Southern District of Mississippi, Rule 83.1(B)(3) "when an attorney enters an appearance in a civil action, he or she shall remain as counsel of record until released by formal order of the court." The rule requires that a motion must be filed. It is our position that you knew Mrs. Newsome would make unauthorized filings when you agreed to file this suit. We also take the position that you knew that she had already filed Civil Action No. 3:07cv00099 and that the case you filed was based upon the same facts and circumstances. You were fully aware that Mrs. Newsome would be a difficult client and one you could not control. However, notwithstanding this knowledge, you chose to sue my clients and instigate this now third frivolous lawsuit against my client on Mrs. Newomse's behalf. Therefore, unless the Court releases you we have no intent of agreeing to your withdrawal as counsel. Also, even if released, you remain responsible for the filing of the Complaint pursuant to Rule 11 and we are going to seek sanctions under that rule.

I regret this position is necessary, but the costs to my client to date have exceed the bounds of reasonableness and much of it is directly due to your knowingly filing this frivolous suit and presumably encouraging Mrs. Newsome's belief that she has a valid claim.

Cordially,

DunbarMonroe, PLLC

Clark Monroe

GCM/mfg
Enclosures
cc: Lanny Pace

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT – JACKSON DIVISION

VOGEL NEWSOME — PLAINTIFF

V. — CIVIL ACTION NO. 3:07CV560WHB-LRA

MELODY CREWS, SPRING LAKE APARTMENTS LLC, THE BRYAN COMPANY, AND DIAL EQUITIES, INC.,

DEFENDANTS

COMPLAINT[1]
JURY TRIAL DEMANDED

Plaintiff, Vogel Newsome ("Plaintiff"), by and through counsel of record submits this Complaint against the Spring Lake Apartments, LLC, The Bryan Company, Dial Equities, Inc. and Melody Crews hereinafter collectively, partially and/or separately "Defendant(s)") would state the following claims, and, the Plaintiff by reference incorporates the original complaint and exhibits:

PARTIES

1. At all times relevant to this Complaint, is a citizen of the United States. Plaintiff previously resided at a residence located at 1434 Hawthorne Cove, Jackson, Mississippi 39272. This building is owned and/or managed by Dial Equities, Inc. with an interest in such business operations by Spring Lake Apartments, LLC.

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[1] NOTE: Boldface, italics and underline in Exhibits and Complaint represents "emphasis" added. Use of Federal Procedural Forms (Lawyers Edition), American Jurisprudence Practice and Procedures, and other resource materials as guide in preparation of Complaint to aid in meeting pleading requirements as required by rules and laws governing said matters.

Information redacted on Exhibits where applicable.

Hinds County Complaint (Case No. 251-06-905 COV) attached hereto as **Exhibit "1"** and is incorporated herein by reference.

EXHIBIT "55"

2. Plaintiff is an African American female.

3. Plaintiff met all rental requirements for leasing desired property.

4. While a tenant under the Lease Agreement with Spring Lake Apartments LLC, the Plaintiff was adversely affected by the acts, policies and practices of Defendants.

5. At all times relevant to this Complaint, Defendant Spring Lake Apartments, LLC ("Spring Lake Apartments"), is a Mississippi corporation doing business at 1000 Spring Lake Boulevard in Jackson, Mississippi. At all times relevant to this action, its registered agent being, Steve H. Bryan, 779 Avery Boulevard North, Ridgeland, Mississippi 39157. See **Exhibit "II"** attached hereto and incorporated herein by reference.

Since notification from Plaintiff of filing of litigation and ***as of August 31, 2006***, said Defendant filed with the Office of the Mississippi Secretary of State a "*Certificate of Dissolution*" and "*Certificate of Cancellation.*" See **Exhibits "III"** and **"IV"** respectively and attached hereto and incorporated by reference. When the Plaintiff obtains the appropriate information through *disclosure information required by law*, this Complaint will be amended accordingly.

6. At all times relevant to this Complaint, Defendant Dial Equities, Inc., is a Multifamily Property Management Company located at 8313 Spring Plaza in Omaha, Nebraska, and manages apartment communities throughout the central United States, and is doing business through its management community Spring Lake Apartments, LLC in Jackson, Mississippi and which may be served with process in this proceeding by serving its registered agent, Carl J. Troia, Jr., 8313 Spring Plaza, Omaha, Nebraska 68124.

7. At all times relevant to this Complaint, Defendant The Bryan Company, manages and markets properties that were developed by Bryan Homes and Bryan Construction Company.

The Bryan Company is a licensed Real Estate Brokerage Firm. Spring Lake Apartment was built by the Bryan Construction Company. It is believed that the Bryan Company has either an ownership or management interest in the Spring Lake Apartments based upon the advertisement produced, developed and circulated in the public domain. All three of these organizations are active today. See **Exhibit "V"** attached hereto and incorporated by reference. The Bryan Company is located at 779 Avery Boulevard North, Ridgeland, Mississippi 39157 and which may be served with process in this proceeding by serving its registered agent, Steve H. Bryan, 779 Avery Boulevard North, Ridgeland, Mississippi 39157.

8. At all times relevant to this Complaint, Defendant Melody Crews ("Crews), is a Mississippi resident and a United States Citizen and was the manager of Spring Lake Apartments, works at Spring Lake Apartments, and may be served at her place of employment located at Spring Lake Apartments, 1000 Spring Lake Boulevard, Jackson, Mississippi 39272.

9. Upon information and belief, Defendants are and were at all times material hereto, individuals doing business as a leasing agent, property manager and landlord both in their individual capacities and under the corporate name of Spring Lake Apartments LLC, located in Hinds County, city of Jackson, in the State of Mississippi.

JURISDICTION

10. Jurisdiction is conferred pursuant to 28 USCS 1331 and 1343 (1)(2)(3)(4).

11. Jurisdiction is conferred on this Court by 42 U.S.C. and 3613(a).

VENUE

12. Venue is proper in the Southern District of Mississippi as the cause of action occurred or accrued in Hinds County, Mississippi.

MATERIAL FACTS

13. Plaintiff an African American, was at all times material hereto a member of a protected class as defined under the race provisions of 42 U.S.C. § 3604.

14. Plaintiff was at all times material hereto an aggrieved party who has been discriminated against in the terms, conditions, or privileges of rental of a dwelling located at 1434 Hawthorne Cove, Jackson, Mississippi 39272 based upon her race.

15. Plaintiff was at all times material hereto an aggrieved party who had been discriminated against in the provision of services or facilities in connection therewith of the subject dwelling located at 1434 Hawthorne Cove, Jackson, Mississippi 39272, and was subjected to discriminatory housing practices by the Defendants as defined under the provisions of 42 U.S.C. § 3602 based upon her race.

16. Defendants through their acts coerced, intimidated, threatened, or interfered with Plaintiff in the exercise or enjoyment of her property rights or on the account of Plaintiff having exercised or enjoyed any rights granted under 42 U.S.C. § 3604.

17. Plaintiff is entitled to relief pursuant to 42 U.S.C. § 3617.

18. Plaintiff in support of this Complaint against the Defendants, Spring Lake Apartments, LLC, The Bryan Company, Dial Equities, Inc., and Melody Crews would state the following *claims*:

19. The Plaintiff herein states that commencing from mid August of 2005, that she made application for admission into the apartment complex of Spring Lake Apartments.

20. That despite her qualifications for said lease that she was unduly required to present evidence of support of credit worthiness based upon the assertion that her credit report showed a negative entry to Trustmark Bank.

21. The Plaintiff contends that the assertion of a negative credit entry from Trustmark Bank as a basis for denial of rental from Spring Lake Apartments was a misrepresentation.

22. After communications and notification of concerns of violations the Plaintiff was allowed to enter into a written lease agreement.

23. The Plaintiff contends that the assertion of a negative credit entry as the basis for denial of rental was pretextual and that said action was intended to block and/or delay the Plaintiff's efforts for rental; deny her said dwelling and discriminate based upon race.

24. On September 15, 2005, Plaintiff entered into a written lease agreement, under which Defendant Dial Equities, Inc. and Spring Lake Apartments[2] leased their apartment located at Spring Lake Apartments, 1434 Hawthorne Cove, Jackson, Mississippi 39272 for a period of approximately one (1) year. A copy of the lease agreement is attached as **Exhibit "VI,"** by reference to the initial complaint and made a part of this pleading – which states: "THIS LEASE AGREEMENT ("Agreement") is made and entered into this date, September 15, 2005 by and between **SLA, LLC** a Nebraska *limited* partnership, hereinafter referred to as the "Lessor" and the following individuals: Vogel Newsome. . ."

25. On September 15, 2005, Plaintiff entered into physical possession of the described premises pursuant to the lease between Plaintiff and Defendant Spring Lake Apartments, LLC but not legal and actual possession.

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[2] See Lease Agreement – Spring Lake Apartments name appearing below Dial Equities, Inc. in upper left-hand corner.

26. Plaintiff duly performed all conditions, covenants, and promises required to be performed by Plaintiff under the laws governing Landlord and Tenant matters and/or under the lease in accordance with its terms and condition, except for those acts that have been prevented, delayed or excused by acts or omissions of Defendants.

27. Prior to moving in Plaintiff was provided a "*Welcome to Spring Lake*" brochure from Spring Lake Apartments notifying her of her new address and contact information for utility company, phone company, and cable company information, and requested by Spring Lake Apartments to "*Please provide confirmation of conversion of electricity upon lease signing.*"

28. Prior to moving in, Plaintiff fulfilled the requirements listed therein of the "*Welcome to Spring Lake*," brochure prior to obtaining possession of premises.

29. On or about September 15, 2005, after taking physical possession of the premises and keys, the Plaintiff complained to Defendants about concerns of not having power (utilities) for approximately three (3) days and having to move in under such conditions.

30. Defendants prior to nor at the time which the Plaintiff signed her lease carried out its procedure with Entergy Electrical Company which required that the Defendants transfer the utility services back into its name after a prior tenant vacated the premises, or soon thereafter to ensure that the new tenants would be able to have utility services at the time of taking possession of the property

31. The Plaintiff contends that at the time of signing the lease the Defendants verified that she had in fact requested a transfer of utility services into her name.

32. The Defendants did not confirm that the services had in fact been transferred out of the prior tenants name for a smooth transition into the Plaintiff's name.

33. On September 15, 2005, the Plaintiff immediately notified the Defendants that her services had not been connected and that she was without electricity. The Defendant(s) failed to act to remedy the problem or to investigate the matter with Entergy to determine whether the problem was a result of their actions or inactions.

34. From September 15-17, the Plaintiff was denied access to utility services.

35. The Plaintiff contends that had the Defendants acted to transfer the utility services back in its name and/or verify with Entergy that the Plaintiff was a new tenant, with a new lease, that she would not have suffered the loss of services at said property which ultimately resulted in the denial of conditions and privileges of rental of the dwelling and the provisions of services and facilities in connection with the rental of the property.

36. On September 17, 2005, Plaintiff notified Defendant Crews of the concerns of water found in the storage unit of her apartment and asked whether or not there had ever been report of roof leaks in her apartment.

37. Crews advised the Plaintiff there had not been.

38. Based upon said affirmation and representation given by Crews, Plaintiff proceeded to have her possessions stored in the storage closet of her apartment.

39. Although provided with the Plaintiff's concerns regarding the leaky roof, Defendants failed to timely check and or investigate the concerns Plaintiff reported.

40. On September 23, 2005, Plaintiff followed up said concerns with the conditions of her apartment at move-in, in a letter entitled, "*CONCERNS: Residency at Spring Lake Apartments*."

41. In Paragraph 1 of said letter, the Plaintiff addressed her concerns of the failure of Spring Lake Apartments to perform its contractual duty to ensure that they had complied with

the terms of the utility company so that Plaintiff would have had access to services utility upon move-in after once she complied with the provisions of the lease, as well as the requirements mandated by Spring Lake Apartments in the move in brochure.

42. In Paragraph (2) of said letter, the Plaintiff addressed the conditions at move in which included evidence of a past leak in the apartment. The Plaintiff specifically requested disclosure regarding prior leaks in the apartment to which she had been assigned.

43. The Defendants knew or should have known of the condition of the apartment prior to rental and failed to disclose and/or address said concerns of Plaintiff despite written demands for information from the Plaintiff.

44. The Plaintiff contends that the Defendants continued to ignore and timely failed to properly inspect and/or check the roof of Plaintiff's apartment.

45. In Paragraph 4 of the letter delivered to the Defendants, the Plaintiff addressed her concerns regarding unauthorized entry and invasion of privacy under the guise of inspection of the apartment which where without prior notification.

46. Considering the conditions and the hardships Plaintiff sustained at move-in, she requested that Defendants make the necessary allowances for the inconvenience.

47. The request for an allowance was in compliance with Paragraph 27 of Lease Agreement.

48. The Defendants wholly refused to allow for the inconvenience and hardship suffered by the Plaintiff by pro rata of the rent.

49. The Plaintiff asserts that the actions of the Defendants were in furtherance of their scheme to intimidate, harass and deny the Plaintiff the benefit of the contract as whites similarly situated.

50. Notwithstanding the actions of the Defendants, the Plaintiff tendered the rent for September 2005, as well as October 2005.

51. The rent for September and October was received and retained by the Defendants.

52. On October 22, 2005, Plaintiff provided Defendants with "*Inventory and Condition Form*" advising of damage found, condition, etc. of her apartment. See **Exhibit "VII"** attached hereto and incorporated by reference and made a part of this complaint.

53. Until the *Inventory and Condition Form* was submitted by Plaintiff, Defendants retained her mailbox key.

54. Although Plaintiff provided the *Inventory and Condition Form* required by Defendants, the Plaintiff encountered problems with obtaining the mailbox key in a timely manner as was promised upon receipt of the inventory and condition form in furtherance of the scheme to harass, intimidate and deny the Plaintiff the rights under her contract as white similarly situated.

55. On November 2005, Plaintiff paid November rent on time. Said rent was received and retained by Defendants.

56. On or about November 3, 2005, Defendants advised that they would be conducting an inspection of the property. Defendants notified the Plaintiff of an inspection by placing a notice on Plaintiff's door

57. On November 5, 2005, Plaintiff contacted Defendants by correspondence entitled, "*NOTICE (undated) of November 3, 2005*" in regards to notice left on her door and advised that she requested to be present for said inspection.

58. Moreover, in said correspondence the Plaintiff shared *concerns of why an inspection was not performed on her apartment* ***prior*** *to her move in* and the necessity for an inspection only 1 ½ months after taking possession.

59. On or about November 9, 2005, Plaintiff took off the time from work to be present for the inspection. However, Defendants did not show up. Said inspection was rescheduled for Friday, November 11, 2005.

60. On November 11, 2005, Crews performed an approximate one-minute inspection of Plaintiff's apartment.

61. Crews did not inspect and/or request to see the damage areas reported in correspondence or on the "*Inventory and Condition Form*" submitted by the Plaintiff, although concerns of inspection of residence were made known to Defendants. Neither did Crews address damage reported during this one-minute inspection.

62. In November 2005, Plaintiff's apartment sustained water damage as a result of a roof leak in the storage unit of her apartment.

63. On December 2, 2005, Plaintiff submitted partial payment of rent along with letter entitled, "*NOTIFICATION: Spring Lake Apartments Failure to Maintain Property and December 2005 Rent*," with copies of photographs which evidence roof leak; and additional damage reported and/or noted on the *Inventory and Condition Form* submitted in October, 2005, explaining reason for partial payment.

64. On December 5, 2005, Plaintiff submitted a letter entitled, "*SPRING LAKE APARTMENTS BREACH OF LEASE AGREEMENT*" citing some of Defendants' violations under the Lease Agreement.

65. In said letter, the Plaintiff addressed statement made by Crews to her, in which Defendant Crews *acknowledged* another tenant's failure to pay rent and their asserting similar arguments as the Plaintiff in a court action. Defendant Crews further informed the Plaintiff that the tenant had not been successful in Court.

66. The Plaintiff contends that the above referenced statement constitutes an admission that the Defendants have had prior complaints of failure to repair pursuant to the lease agreement and have utilized the judicial system to systematically evict the tenant despite failure to carry out their contractual duties.

67. Furthermore, in said letter, the Plaintiff provided the Defendants with information regarding Landlord and Tenant laws and/or statutes. Plaintiff also requested that,

> *THEREFORE, PLEASE TAKE NOTICE, considering the most recent behavior by Ms. Crews/Spring Lake, I am requesting that a representative from the main office (Dial Properties – or applicable office) notify me in writing. . . of how it intends to handle this matter and how I am to go about recouping rent Spring Lake has received from me for my apartment which was not in full repair as it led me to believe. Damage Spring Lake having knowledge of or should have had knowledge of based on my correspondence and communication I have had with management Spring Lake, yet failed to repair although it continued to receive and accept my rent payments month-after-month."*

68. Plaintiff *never* received a call and/or response from Dial Properties and/or Dial Equities, The Bryan Company and/or applicable management company(s) on how the Defendants were going to handle the complaint and concerns submitted to their attention.

69. Plaintiff provided Defendants with applicable statute and/or case law to assist in explaining to Defendants said breach and/or violation of the laws. Through said letter, the Plaintiff addresses concerns of *retaliation* by Defendants advising,

I will like to reiterate my concerns of Spring Lake's/Ms. Crews or its representatives' retaliation against me for Spring Lake's breach in the lease agreement entered into and my reporting of same. Also, I believe that Ms. Crews' ill attitude and ill approach in the handling of this matter is unprofessional and unacceptable for the image that Spring Lake has led me to believe it expects of its staff."

70. On December 8, 2005, in response to letter of Crews dated December 7, 2005, Plaintiff again provided Defendants with a letter entitled, "*SPRING LAKE APARTMENTS BREACH OF LEASE AGREEMENT*" wherein Defendants were advised that Plaintiff ***did not*** waive any rights she may have under the Landlord and Tenant laws. Plaintiff directed the Defendants to case law which governs said matters. [3]

71. The Defendants had <u>well</u> <u>over</u> <u>thirty</u> (30) <u>days</u> notification of damages and concerns reported by the Plaintiff; however, elected not to repair damage(s) and/or defects reported by the Plaintiff.

72. The Plaintiff on numerous occasions advised Defendants that she would make either herself or someone else available to be present for any inspections and/or access to her residence.

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[3] Mississippi Code Annotated (Mississippi Residential Landlord & Tenant Act):

SEC. 89-8-5. Waiver of rights prohibited; provisions prohibited in rental agreement.

In any agreement, oral or written, for the rental of real property as a dwelling place, a landlord or tenant may not agree to waive or otherwise forego any of the rights, duties or remedies under this chapter, except as otherwise provided by this chapter. No rental agreement may provide that the tenant or the landlord:

(a) Authorizes any person to confess judgment on a claim arising out of the rental agreement; or

(b) Agrees to the exculpation or limitation of any liability of the landlord arising as a result of the landlord's willful misconduct or the costs connected therewith.

73. The Plaintiff made herself or someone else to available to assist Defendants in obtaining access to her residence for any inspections and/or repairs being performed by them.

74. On or about December 15, 2005, Defendants painted storage unit without repairing the roof.

75. The painting only acted to conceal and/or hide/shield evidence of a defective roof.

76. On December 16, 2005, Plaintiff requested that Defendants produce documentation showing that the roof of her apartment had been repaired.

77. After a heavy rain, the storage unit of her apartment still evidenced roof damage.

78. On January 4, 2006, still not having received documentation from Defendants that the roof of her apartment had been repaired, Plaintiff provided partial payment of rent and explained the reason for withholding a portion of the rent. Through said letter, the Plaintiff explained reasons for withholding part of rent.

79. On January 5, 2006, Plaintiff submitted correspondence to Defendants sub-titled, "*Confirmation of Receipt of Voice Mail that Spring Lake Will Seek Legal Action.*"

80. In said correspondence Defendants were notified that if such actions were brought against her, she will seek legal action against Defendants.

81. On January 12, 2006, through correspondence entitled "SPRING LAKE APARTMENT'S BREACH OF CONTRACT" and sub-titled, "Spring Lake Apartment Community Three-Day Notice To Pay Or Quit," the Plaintiff notified Defendants of receipt of "THREE-DAY NOTICE TO PAY RENT OR QUIT".

82. The Plaintiff in her letter dated January 12, 2006, noticed the Defendants of the following: (a) Defendants were advised and/or put on notice that the notice to pay rent or quit was not a valid document and was in violation of the laws governing Landlord and Tenant

matters in the State of Mississippi[4] and other laws; (b) Defendants were advised that she would

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[4] For purposes of this Complaint terms are defined (however not limited) as follows under the Mississippi Residential Landlord and Tenant Act:

> **SEC. 89-8-7. Definitions; agent of landlord.**
> (1) Subject to additional definitions contained in subsequent sections of this chapter which apply to specific sections or parts thereof, and unless the context otherwise requires, in this chapter:
>
> **(a) "Building and housing codes" includes any law, ordinance, or governmental regulation concerning fitness for habitation, construction, maintenance, operation, occupancy or use of any premises or dwelling unit;**
>
> (b) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence or sleeping place by one (1) person who maintains a household or by two (2) or more persons who maintain a common household;
>
> **(c) "Good faith" means honesty in fact in the conduct of the transaction concerned and observation of reasonable community standards of fair dealing;**
>
> **(d) "Landlord" means the owner, lessor or sublessor of the dwelling unit or the building of which it is a part, or the agent representing such owner, lessor or sublessor;**
>
> **(e) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, and any other legal or commercial entity;**
>
> **(f) "Owner" means one or more persons, jointly or severally, in whom is vested (i) all or part of the legal title to property or (ii) all or part of the beneficial ownership and a right to present use and enjoyment of the premises, and the term includes a mortgagee in possession;**
>
> (g) "Premises" means a dwelling unit and the structure of which it is a part, facilities and appurtenances therein, and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant;
>
> (h) "Rent" means all payments to be made to the landlord under the rental agreement;
>
> (i) "Rental agreement" means all agreements, written or oral, and valid rules and regulations adopted under Section 89-8-11 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises;
>
> (j) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others;

not be submitting any additional rent nor would she deliver the possession of the premises; (c) Defendants were advised that she was not waiving any legal rights under the applicable laws governing said matter; (d) Defendants were advised and placed on notice that actions taken by them was harassing, embarrassing, humiliating and deprived the Plaintiff of her protected rights. (e) Defendants were advised to cease and desist from further actions of harassment; (f) Defendants were advised to communicate via the attorney for Spring Lake Apartment. Attached hereto as **Exhibit "VIII"** is a copy of the letter dated which should be incorporated by reference as if fully typed herein.

83. Prior to filing its complaint against the Plaintiff in Justice Court, the Defendants had opportunity(s) to contact attorney(s) to determine if their action it intended to take against the Plaintiff were within the laws governing Landlord and Tenant matters; moreover, laws governing the Fair Housing Act.

84. On January 23, 2006, upon retuning to her residence, Plaintiff found at her door "*Summons to Tenant.*"

85. On January 23, 2006, Plaintiff provided Justice Court with a timely Request for Extension of Time to Answer Summons to Tenant and Request to Stay Proceedings Before This Court.

> (k) "Qualified tenant management organizations" means any organization incorporated under the Mississippi Nonprofit Corporation Act, a majority of the directors of which are tenants of the housing project to be managed under a contract authorized by this section and which is able to conform to standards set by the United States Department of Housing and Urban Development as capable of satisfactorily performing the operational and management functions delegated to it by the contract.
>
> **(2) For purposes of giving any notice required under this chapter, notice given to the agent of the landlord is equivalent to giving notice to the landlord. The landlord may contract with an agent to assume all the rights and duties of the landlord under this chapter; provided, however, that such a contract does not relieve the landlord of ultimate liability in regard to such rights and duties.**

86. Not hearing from the Justice Court, on January 26, 2006, the Plaintiff followed January 23 letter to Justice Court with facsimile correspondence.

87. On January 27, 2006, a hearing was had on said matters against Plaintiff's objections. The Hinds County Justice Court rendered a judgment in favor of Defendant, Spring Lake Apartments.

88. The Plaintiff contends that the judgment was moot/void in that ***there was no*** service of process filed in the matter in Hinds County Justice Court and the service of summons was improper; nor did said court inquire as to whether required service of process had been filed as required by law.

89. Plaintiff provided the Defendants with sufficient statute/laws supporting the unlawful and/or illegal methods in which they relied upon in service of their Summons in the Justice Court action.

90. Information provided the Defendants was timely, proper and adequate to place them on notice that service of summons was not perfected under the guidelines/*procedures* of the laws.

91. Notwithstanding, the Plaintiff appeared for Court and noticed the Court that her appearance did not constitute a waiver.

92. The Plaintiff contends that the Justice Court unlawfully entered judgment against her on January 27, 2006.

93. During the January 27, 2006 hearing, Crews advised the Justice Court that the roof had been repaired. Statement made by Crews being false, misrepresentation of the facts and deliberately done to commit fraud on said court.

94. Crews presented no evidence to sustain and/or support said assertions in that she having fully knowledge that her acts were unlawful and done for such fraudulent purposes and deception upon said court and the Plaintiff.

95. Actions of Crews were deliberate, willful, malicious and wanton. Crews handling said matters with the approval and authority of Defendants.

96. On January 28, 2006, the day after Crews notified the Court that roof repairs were made, Jackson received heavy rain. Again, Plaintiff's storage unit sustained water damage and the living room area evidenced water damage.

97. On January 30, 2007, the Plaintiff filed a timely "*Motion to Amend and/or Vacate the Judgment*." The Court did not entertain the Motion.

98. On or about January 30, 2006, the Judgment in this matter was entered by the Justice Court clerk's office thereby giving the Plaintiff 10 days to file a Notice of Appeal.

99. There is no evidence nor case laws to support the Justice Court obtained jurisdiction over the Plaintiff in the action brought against her by Defendants.

100. The Plaintiff filed her *Notice of Appeal* on February 6, 2006, erroneously in the Justice Court. However, because the Justice Court action (as a matter of law) is null/void, no such Notice of Appeal was required of the Plaintiff.

101. While the Notice of Appeal was filed in the Justice Court, said court failed to forward appeal to the applicable court and/or advise the Plaintiff of any such error and allow her the opportunity to correct should she desire. Said court having contact information (phone number and address information) for the Plaintiff; however, failed to notify of any error.

102. On February 13, 2006, the Plaintiff returned to her residence and found a *Warrant of Removal*. The Plaintiff contends that the *Warrant of Removal* was void, nonbinding and of no legal effect because the process of service of the Summons was not perfected as required by law.

103. The Plaintiff maintains that the Justice Court lacked jurisdiction over the matter and could not authorize and/or execute said warrant and neither could the Defendants or others act to enforce it.

104. On February 13, 2006, the warrant of removal was left in the crack of the door of the Plaintiff's residence. The Plaintiff contends that the warrant was improperly served and is unlawful; moreover, moot/void.

105. On February 14, 2006, the Defendants were notified through *facsimile* correspondence that the Plaintiff would seek an injunction and restraining order against them to prevent further unlawful proceedings and/or actions against her. Moreover, the Plaintiff mailed a copy of said pleading to the Defendants.

106. Nevertheless, the Defendants with the aid of others moved swiftly to circumvent the laws, and, in furtherance of their *discriminatory* practices to deprive the Plaintiff housing and/or her dwelling, moved unlawfully and illegally to have the Plaintiff evicted from her residence. Acts further substantiating the willful, malicious and wanton acts of Defendants.

107. Upon returning home on February 14, 2006, Plaintiff found Defendants Melody Crews, Dial Equities employees and the Constable his aid/assistant (a person in uniform) in her apartment unlawfully removing her possessions. The Constable was provided with a copy of the filed *Motion for an Emergency Injunction and Restraining Order* against the Defendants and their representatives. A copy of said pleading was also mailed to the Defendants.

108. Defendants and those in whom they contacted to participate in the unlawful/illegal eviction of the Plaintiff, trespassed and forcibly entered the Plaintiff's dwelling/residence and removed her property.

109. The Plaintiff advised Defendants, Constable and others participating in the unlawful/illegal eviction, that their actions taken against her were unlawful/illegal and in violation of her rights. At all times the Plaintiff remained civil and maintained the peace. The Constable in violation of her right to freedom of speech, removed personal property from the Plaintiff, placed the Plaintiff under arrest and took her to the Hinds County Detention Center in Raymond, Mississippi where she was booked. The Plaintiff contends that all times the Defendants knew or should have known that their actions to evict the Plaintiff were discriminatory, retaliatory and the fraudulent use of the court system in order to carry out their discriminatory actions.

110. On February 14, 2006, upon being released from the Hinds County Detention Center, the Plaintiff returned home to retrieve her car and what was left of her belongings which had been left on the lawn/grass of Spring Lake Apartments.

111. The property of Plaintiff was subjected to damage, theft, loss, etc. as a direct and proximate result of Defendants actions.

112. Thereafter the Plaintiff filed her action in Hinds County Court wherein an order was issued dismissing all claims or causes of actions and defenses of Plaintiff arising from the lease, occupancy or eviction of Vogel Newsome from Spring Lake Apartment that were adjudicated by the Justice Court are hereby dismissed as barred by res judicata and/or collateral estoppel and to the extent the Defendant's Motion to Dismiss is granted. The Plaintiff was given 15 days specifying any remaining causes of action.

113. On or about September 11, 2006, Plaintiff's attorney, Wanda Abioto, submitted for filing pleading entitled, "*Plaintiff's Motion for Additional Findings of Fact and Conclusions of Law by this Court Regarding the Granting of Defendant Spring Lake Apartments' Motion for Dismissal.*" This pleading was submitted for filing in a timely manner via facsimile. *The filing of this post-motion* ***was timely*** *and* ***preserved the rights*** *of Plaintiff Newsome*

114. On or about September 11, 2006, Plaintiff's attorney, Wanda Abioto, submitted for filing pleading entitled, "*Plaintiff's Motion for Additional Findings of Fact and Conclusions of Law by this Court Regarding the Granting of Defendants Dial Equities, Inc. and Melody Crews' Motion for Dismissal.*" This pleading was submitted for filing in a timely manner via facsimile. *The filing of this post-motion* ***was timely*** *and* ***preserved the rights*** *of Plaintiff Newsome.*

115. On or about September 15, 2006, Plaintiff's attorney in the Hinds County matter, submitted for filing the following:

a. Notice of First Amended Complaint;

b. Amended Complaint: and

c. Notice of Dismissal Without Prejudice

in the Hinds County Court action (Case No. 251-06-905). Said filing preserved the rights of the Plaintiff. See **Exhibits "X", "XI"** and **"XII"** respectively attached hereto and incorporated by reference and made a part of this pleading. Pursuant to Rule 42 of the Mississippi Rules of Procedure the Plaintiff filed a timely notice of dismissal of all claims raised in state court.[5]

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[5] **(a) Voluntary Dismissal Effect Thereof.**

(1) **By Plaintiff By Stipulation.** Subject to the provisions of Rule 66, or of any statute of the State of Mississippi, and upon the payment of all costs, an action may be dismissed by the plaintiff without order of court:

(i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs.

116. The *Notice of Dismissal* filed in Hinds County Court noticed the Defendants that, *"Pursuant to said rule, the plaintiff hereby notifies the Court and the Defendant of said dismissal without prejudice for purposes of filing* ***claims in the United States District Court for the Southern District of Mississippi*** *based upon the jurisdictional basis set forth in the document herein marked Amended Complaint as an exhibit hereto."*

117. On September 15, 2006, Plaintiff's attorney therein complied with instructions provided to respond in 15 days, and, on behalf of the Plaintiff therein complied with said order by alleging the claims herein referenced; subsequently dismissed said action after filing said amendment without prejudice and filed her claim in this Court seeking federal jurisdiction

118. The Plaintiff suffered damages as a result of the unlawful actions of the Defendants and the misuse of the judicial system to carry out their discriminatory and malicious actions.

COUNT ONE

42 USCS 3604

119. The Plaintiff realleges and incorporate the facts and allegations contained in Paragraphs 118 above, as if fully set forth herein.

120. Pursuant to 42 U.S.C. 3604(b), it is unlawful to discriminate against any person in the terms, conditions or privileges or the provision of services or facilities in connection with the sale or rental of a dwelling because of race.

121. Defendants have a duty to apply all terms, conditions and privileges of the rules and regulations in a non-discriminatory manner.

122. Defendants as owner and/or its agent (1) placed the apartment located at 1434 Hawthorne Cove, Jackson, Mississippi on the open market for rent; (2) the Plaintiff was willing to rent said location/property/apartment and submitted her application; (3) the Plaintiff

communicated to Defendants' representative her willingness to rent said location; (4) that Defendants refused to initially rent said location alleging credit worthiness of Plaintiff; (5) said allegation was false; and (6) there was no apparent reason for Defendants to refuse to rent the property/apartment to the Plaintiff other than her race.

123. Defendants as owner and/or its agent (1) placed the apartment located at 1434 Hawthorne Cove, Jackson, Mississippi on the open market for rent; (2) Plaintiff is an African-American; (3) Plaintiff applied for and was qualified to rent said apartment; (4) Plaintiff was denied and/or rejected apartment as Defendants were alleging reasons as being credit worthiness of Plaintiff which was false – after Plaintiff contested she was allowed to rent the apartment with continued opposition and discriminatory practices from the Defendants; (5) Plaintiff was unlawfully and illegally evicted approximately five (5) months later; (6) apartment opportunity remained available. Defendants violated 42 U.S.C. 3604(b) by discriminating against the Plaintiff in the terms, conditions, or privileges of rental of this dwelling in the instant facts.

124. Further the Plaintiff asserts that the Defendants violated 42 U.S.C. 3604(b) by discriminating in the terms, conditions, or privileges of rental of a dwelling and in the provision of services or facilities in connection therewith by failing to provide proper services as it relates to the utilities; failing to inspect and prepare property prior to rental; failing to disclose structural defects in the property resulting in property damage; failing to provide necessary maintenance; demanding unlawful payment of rent while simultaneously failing to provide terms, conditions, privileges, services and facilities of rental of said property.

125. Further Defendants violated 42 U.S.C. 3617 by retaliating, harassing, threatening and intimidating Plaintiff in the malicious prosecution of the Plaintiff.

126. As a result of Defendants' actions, Plaintiff suffered grievous harm and damages including but not limited to monetary damages and emotional suffering.

127. The Plaintiff herein states that commencing from mid August of 2005, that she made application for admission into the apartment complex of Spring Lake Apartments.

128. That despite Plaintiff's qualifications for said lease that she was unduly required to present evidence of support of credit worthiness based upon the assertion that her credit report showed a negative entry to Trustmark Bank;

129. The Plaintiff contends that the assertion of a negative credit entry from Trustmark Bank was a misrepresentation as to the original reason she was denied rental of the apartment. Said action formed the basis of a conspiracy and scheme to deny rental of the apartment to the Plaintiff as an African-American.

130. Based upon knowledge and belief, the Plaintiff states that she believes whites similarly situated have not been required to show evidence of support after meeting the basic qualifications;

131. The Plaintiff states further that she complained regarding said any additional requirements and was subsequently leased the apartment the subject of the herein litigation.

132. Yet the Plaintiff maintains that the rental was part of an ongoing and continuous scheme to deny an equal housing opportunity to the Plaintiff as whites similarly situated and thereafter resulted in the intentional act to rent a substandard apartment to the Plaintiff which had was known to have a structural defect, as well as to provide substandard services in the rental of services associated with said rental.

133. While the Defendants leased the dwelling/apartment to the Plaintiff, they continued to seek ways to discriminate against her and continued to subject her to discriminatory practices

to force her to give up her apartment. When such efforts by the Defendants failed, they resorted to *criminal* acts and/or practices to have Plaintiff illegally/unlawfully removed.

134. The Plaintiff states however that she was leased a substandard apartment, denied proper repairs; and unduly prejudiced during her move in by failure of the Defendants to transfer the utilities per the contract and maintain the property in compliance with building codes/regulations.

135. The Plaintiff further believes that said action was based upon her race; moreover, Plaintiff's participation in protected activities.

136. As a result of said action, the Defendants in violation of 42 USCS 3604 discriminated against her in the terms, conditions, or privileges of the rental of the dwelling and in the provision of services or facilities in connection therewith, because of her race.

137. The Plaintiff avers that she suffered damages as a result of the actions of the Defendant more fully set forth in the paragraph marked damages.

138. Wherefore the Plaintiff seeks relief accorded under this statute.

COUNT TWO

42 USC § 3617 INTERFERENCE, COERCION, OR INTIMIDATION

139. The Plaintiff reallege and incorporate the facts and allegations contained in Paragraphs 1-137 above, as if fully set forth herein.

140. The Plaintiff states that as a result of protesting against the unlawful interference with her right to equal housing and the right to contract under the law as whites similarly situated that her right to enjoy her home was interfered with on account of her having exercised the rights protected under 42 USCS 3604.

141. The Plaintiff states that Defendants interfered with her enjoyment of protected rights under the Fair Housing Act; interfered with enjoyment of her residence/apartment and that Defendants subjected her to threats and/or acts of force, coercion and duress.

142. The Plaintiff states that the Defendants severe unlawful acts, threats, interference, and intimidation generated fear in her; moreover, such acts lead to the unlawful arrest of the Plaintiff wherein she was subjected to further injuries.

143. The Plaintiff states that the acts of the Defendants were intentional and meant to deny her right to equal housing protected by the law.

144. Further the Plaintiff states that she suffered damages more specifically set forth in the paragraph marked damages.

145. Wherefore the Plaintiff seeks relief accorded under this statute.

COUNT THREE

42 USCS 1981

146. The Plaintiff reallege and incorporate the facts and allegations contained in Paragraphs 1-145 above, as if fully set forth herein.

147. The Plaintiff states that the acts of the Defendants in unduly changing the terms and conditions of rental, as well as interfering with her right of rental based upon race was in violation of 42 USCS 1981.

148. The Plaintiff states that the Defendants acted unlawfully in denying to her the right to make and enforce contract and the full and equal benefit of all laws and proceeding for the security of persons and property as is enjoyed by white citizens.

149. That the Plaintiff was damaged as a result of the acts of the Defendants herein complained and more fully set forth in the paragraph marked damages pursuant to 42 USCS 1981(a).

150. That the Plaintiff seeks a remedy pursuant to the law herein.

COUNT FOUR

FRAUDULENT BREACH OF CONTRACT AND BREACH OF COVENANT TO REPAIR

151. The Plaintiff reallege and incorporate the facts and allegations contained in Paragraphs 1-150 above, as if fully set forth herein.

152. The Plaintiff entered into a lease agreement with Defendant Spring Lake Apartments on September 15, 2005. Pursuant to the agreement, the Defendant was to have notified Entergy (Utility Company) of the transfer of the utilities; however they failed to do so. The Plaintiff was forced to move into her apartment without utilities and was unable to properly inspect the property prior to or on the date of the move in.

153. The Plaintiff avers that the Defendants knew or should have known of the inability of the Plaintiff to properly inspect the property due to their failure to transfer the utilities pursuant to their agreement.

154. Plaintiff avers that Defendants failed to assure transfer of utilities and that said failure was deliberate, willful and malicious to shield/hide damages of the residence known to them; moreover, to shield/hide the unsafe and unhealthy conditions of said dwelling.

155. On or about September 17, 2005, the Plaintiff after inspection informed the Defendants of the probability that the roof of the apartment leased to her was not in full repair

and/or was damaged. The Defendants were timely, properly and adequately notified of concerns of roof damage.

156. The Plaintiff maintains that the Defendants were in a superior knowledge position regarding the condition of the roof and intentionally failed to inform the Plaintiff of the hidden damage of the roof. Pursuant to Miss. Code Ann. § 89-8-9, Plaintiff submitted request for repairs in good faith as required by law. The Defendants despite being properly warned as early as September of 2005 failed to and refused to properly inspect and repair the roof in the Plaintiff's apartment pursuant to the lease agreement.

157. In November 2005, there was a heavy rainstorm. When Plaintiff looked in the storage area, she discovered that a leak in the roof had caused rain water to enter into her apartment, resulting in the damage and destruction of boxes and some of the contents therein. The damaged and/or destroyed items of personal property consisted of: a) clothes, b) paper items – documents/books, etc.; c) boxes and other merchandise.

158. When Plaintiff entered into possession, and at all times mentioned, Defendant exercised full and complete control and supervision of the roof of the apartment building in which Plaintiff resided. Under Paragraphs 32 of the lease agreement, Defendants were required to maintain the roof and other common areas in the building in good repair.

159. Pursuant to Paragraph 32 of Lease Agreement, ". . . *Lessor will make repairs as required by law to the Premises with reasonable promptness after receipt of written or actual notice. . .*" Although Defendants had received timely and adequate notice of damages reported by Plaintiff, it refused to make the necessary repairs and restore the property to full repair upon verbal notification of September 17, 2005 and written notification on September 23, 2005, along with other concerns. Acts in furtherance of discriminatory practices rendered the Plaintiff.

160. Defendants knew, or with the exercise of reasonable care should have known, of the roof damage to Plaintiff's apartment. It was the duty of the Defendants to repair and maintain its roof and not the Plaintiff's. The roof was damaged prior to the Plaintiff's occupancy; however the Defendants chose not to repair its property and did not make said failures to repair its property known to the Plaintiff prior to leasing the residence to her.

161. The Defendants deliberately and/or knowingly concealed the roof damage of the residence it leased to the Plaintiff from her.

162. Defendant knew, or with the exercise of reasonable care should have known, that the roof of Defendants' building required repair for a considerable time prior to the date on which Plaintiff's personal property was damaged and/or was destroyed, but Defendant negligently permitted the roof to remain in a defective, unsafe and dangerous condition, with the result that rain leaked through the roof into the Plaintiff's apartment.

163. Defendants, knowing that the roof of Defendants' building required repair and that rain would leak through the roof and into Plaintiff's apartment, could reasonably have foreseen that the rain would damage Plaintiff's personal property in the apartment. Yet Defendants failed to repair the roof or to warn Plaintiff of impending damage and/or harm.

164. Plaintiff had no knowledge prior to leasing residence that the roof was not in full repair and based on the representation and assurance given by Crews, believed that the storage area was safe to store her personal property. Plaintiff had no access to the roof, and neither had the right nor the duty to inspect or repair it.

165. As a result of the water damage sustained to the storage unit, Plaintiff was required to store boxes in the dining room area and bedroom area of her apartment. Said boxes took up a

great deal of space. The leak further extended into the living area of the Plaintiff's apartment and ***mold*** began to form around the baseboard of the storage area.

166. Pursuant to Paragraph 27 – DESTRUCTION, of the Lease Agreement, "*If the Premises becomes uninhabitable due to fire, flood, explosion or other cause, except where the cause is to be determined to be gross negligence on the part of Lessor, may at it option; terminate the Agreement within 30 days; or provide suitable accommodations within the Apartment community. . . If Lessor elects to repair the Premises and if the damage is not due to the Lessee's negligence, the rent* ***shall be abated*** *and prorated from the date of the casualty to the date you may reoccupy the premises; provided that during the time we are making repairs you have vacated the Premises, if Lessor requested and or approved. . .*" Boldface and italics added for emphasis.

167. The damages reported by the Plaintiff were not due to her negligence.

168. The failure to repair the roof damage and/or leak was due to Defendants' negligence.

169. According to the lease, Plaintiff was entitled to an abatement of rent and/or that rent be prorated; however, the Defendants failed to comply with said obligations under the lease.

170. The Defendants failed to comply with Paragraph 27 of the Lease Agreement. The Plaintiff contends that the Defendant's statement contained under Paragraph 27 of the Lease Agreement were false, misleading, fraudulent and clearly a misrepresentation.

171. Plaintiff is entitled to recover damages under the terms of said lease and other laws governing said matters.

172. Defendants were first notified of concerns of roof leak and/or water damage on September 17, 2005.

173. Pursuant to Paragraph 22 – HOLD HARMLESS, of the Lease Agreement, "*Lessor shall not be liable for any damage, loss or injury to persons or property occurring within the Premises or upon any other areas of the community <u>except</u> as a result of Lessor's gross negligence.*" Boldface and italics added for emphasis. Defendant's gross negligent and/or negligent failure to properly maintain and repair the roof of the apartment building proximately caused the damage and destruction of Plaintiff's personal property, as well as constituted a breach of contract for which the Plaintiff suffered damages more specifically set forth in the paragraph marked damages.

174. According to Paragraph 22 of the Lease Agreement, Defendants take full responsibility for the damage, loss or injury to Plaintiff, property due to their gross negligence.

175. Plaintiff performed all duties and obligation under the lease agreement but Defendants failed and refused to make the necessary repairs and failed to authorize the Plaintiff permission to obtain estimates of the costs of repair of roof. As a direct and proximate result of the breach of contract the Plaintiff has sustained damages.

176. Neither the Plaintiff nor the Defendants terminated the Lease Agreement entered into. The Defendants merely resorted to an unlawful and/or illegal eviction of the Plaintiff which is clearly in violation of the laws of Mississippi Code Annotated 89-8-13. [6]

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[6] Mississippi Code Annotated § 89-8-13 states:

> **SEC. 89-8-13. Right to terminate tenancy for breach; notice of breach; return of prepaid rent and security.**
> (1). If there is a material noncompliance by the tenant with the rental agreement or the obligations imposed by Section 89-8-25, the landlord may terminate the tenancy as set out in subsection (3) of this section or resort to any other remedy at law or in equity except as prohibited by this chapter.
>
> (2) If there is a material noncompliance by the landlord with the rental agreement or the obligations imposed by Section 89-8-23, the tenant may terminate the tenancy as set out in subsection (3) of this section or

177. Through this instant action, Plaintiff seeks to enforce the Lease Agreement entered into and to recover from said damages sustained as a direct and proximate result to the discriminatory treatment rendered her.

178. The Plaintiff avers that she suffered damages as a result of the actions of the Defendant more fully set forth in the paragraph marked damages.

179. That the Plaintiff seeks a remedy pursuant to the law herein.

COUNT FIVE

FRAUD/MISREPRESENTATION

180. The Plaintiff reallege and incorporate the facts and allegations contained in Paragraphs 1-178 above, as if fully set forth herein.

181. Federal Rules of Civil Procedure – Rule 9, provides, when fraud[7] is alleged, it must be particularized but it still must be short, plain, simple, concise and direct as is reasonable under the circumstances.

182. The Plaintiff states that the Defendants FRAUDULENTLY, DISCRIMINATORILY AND MALICIOUSLY represented at the time of contracting that the apartment had been inspected and that no substantial defects existed to the unit. Further the

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resort to any other remedy at law or in equity except as prohibited by this chapter.
(4) If the rental agreement is terminated, the landlord shall return all prepaid and unearned rent and security recoverable by the tenant under Section 89-8-21.

[7] **Fraud** is defined as: (1) An intentional perversion of the truth for the purpose of inducing another in reliance upon it to surrender a legal right; (2) A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury; (3) Any kind of artifice employed by one person to deceive another; (4) A generic term, embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to get advantage over another by false suggestions or by suppression of truth, and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated. See *Black's Law Dictionary*, Fifth Edition by Henry Campbell Black, M.A.

Defendants fraudulently, discriminatorily and maliciously represented that they complied with the equal housing mandate by law.

183. The Plaintiff states that she relied upon the representation of the Defendant regarding the condition of the apartment; their commitment to properly remedy any defects to the apartment within a reasonable time and that they engaged in fair housing.

184. Further the Plaintiff relied upon the Defendant(s) representation that they would not unduly prejudice her rights as a tenant by entering her apartment without her knowledge absent exigent circumstances.

185. The Plaintiff states that the Defendants intentionally misrepresented facts regarding the condition of the apartment and adherence to the right of notice prior to inspection.

186. As a result of the misrepresentation, the Plaintiff suffered damages herein for which she seeks damages more fully set forth in the paragraph marked damages.

187. Defendant Crews on behalf of herself and Defendants made false representations of a matter fact by words and by conduct, by false misleading allegations, concealed information of material fact that should have been disclosed, for the purposes of deceiving the Plaintiff so that she would act upon it with knowledge to cause her legal harm. Defendant Crews, on behalf of herself and other Defendants, doing so with full knowledge that her actions were fraudulent and done with the purposes of causing the Plaintiff legal injury.

188. The actions by Defendant Crews and/or Defendants were done to deceive the Plaintiff.

189. Defendant Crews on behalf of herself and Defendants embraced all multifarious means through ingenuity in which she could devise and which she resorted to, to get advantage over Plaintiff by providing false suggestions, suppressing the truth and relied upon deceit, tricks,

craftiness, dissembling and any unfair way by which Plaintiff was cheated. Defendant Crews, on behalf of herself and other Defendants, doing so with full knowledge that her actions were fraudulent and done with the purposes of causing the Plaintiff legal injury.

190. Plaintiff relied upon the false statements and/or information provided by Crews, on behalf of herself and other Defendants, and acted upon said statements/information which caused the Plaintiff injury/harm.

191. Defendant Crews, on behalf of herself and other Defendants, made fraudulent statements with knowledge of said statements being false; and that said statements were made with utter disregard of the truth or false.[8]

192. Defendant Crews knew and/or Defendants should have known that acceptance of misrepresentations made, would lead the mind to an apprehension of a condition other and different from that which exist. Defendants making statements for purposes to deceive and mislead the Plaintiff.

193. Defendant Crews on behalf of herself and/or Defendants, intentionally perverted the truth in representation of "material facts" regarding the premises/Apartment located at 1434 Hawthorne Cove, Jackson, Mississippi, for the purposes of inducing the Plaintiff to rely upon said representations and to get her to surrender legal rights.

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[8] ***Elements*** of a cause of action for **"fraud"** include false representation of a present or past fact made by defendant, action in reliance thereupon by plaintiff, and damage resulting to plaintiff from such misrepresentation. See *Black's Law Dictionary*, Fifth Edition by Henry Campbell Black, M.A

Fraudulent representation is defined as: A false statement as to material fact, made with intent that another rely thereon, which is believed by other party and on which he relies and by which he is induced to act and does act to his injury, and statement is fraudulent if speaker knows statement to be false or if it is made with utter disregard of its truth or falsity. See *Black's Law Dictionary*, Fifth Edition by Henry Campbell Black, M.A.

Misrepresentation is defined as: A manifestation by words or other conduct by one person to another that, under the circumstances, amounts to an assertion not in accordance with the facts. An untrue statement of fact. An incorrect or false representation. That which, if accepted, leads the mind to an apprehension of a condition other and different from that which exists. Colloquially it is understood to mean a statement made to deceive and mislead. See *Black's Law Dictionary*, Fifth Edition by Henry Campbell Black, M.A.

194. Plaintiff reasonably relied upon the statements of the Crews/Defendants, and believed them to be true, and had no reason to doubt the validity of the statements made to her in that she asked specific questions and was assured by Defendant that there was no need for the concerns conveyed. Had the Plaintiff known the true facts associated with the Apartment, she would not have completed the application and entered into the lease of said unit. The Plaintiff relied upon the representations made to her by the Crews/Defendant and/or Defendants' representative(s).

195. When Defendant(s) and/or their representative(s) made the representations above, Defendant(s) had no reasonable grounds to believe them to be true in that they are the owner(s)/manager(s) of the Apartment leased and had a duty to inspect and maintain said apartment/residence.

196. At the time Defendants rented/leased the Apartment to the Plaintiff, they knew and/or should have known that the premises/Apartment was unfit for human occupation, in that they substantially failed to comply with the statutes and/or housing codes of the state of Mississippi, County of Hinds, which are designed to protect a tenant's health and safety.

197. Specifically, at the time Plaintiff took possession, the premises were uninhabitable and unfit for human occupation, in that among other things, there were safety and health violations – the roof leaked and created mold conditions, etc. None of these conditions and those reported by the Plaintiff were known prior to or at the time Plaintiff moved into the premises.

198. In breach of Defendants' covenant for the covenant of repair and sanitary maintenance and care of the leased premises, Defendants knowingly permitted the roof to continue to leak and sustain water damage to the structure, with the result that from such water damage, mold would accumulate, would began to seep into other portions of the residence

causing additional safety and health violations, to the extent far exceeding the ordinary wear and tear caused by ordinary and reasonable use of the premises/Apartment.

199. Plaintiff believes the Defendants have an elaborate scam/scheme going on wherein they fraudulently lease/rent the premises/Apartment to potential tenant(s), such as Plaintiff, and then when tenants complained about Defendants failure to repair and/or breach of covenant to repair, Defendants (with the assistance of Crews and/or other attorneys) sought to have them evicted and retain the deposit(s) collected asserting the premises/Apartment was in good condition. Defendants then would proceed to also collect the entire amount under the contract through collection process – reporting to collection agency. Efforts taken by Defendants to destroy tenants', such as Plaintiff's, credit. Collecting and retaining rent for an inhabitable Apartment.

200. The Defendants insisted on collecting rent on the Apartment leased to Plaintiff with knowledge that it did not meet the requirements of the housing codes and/or or laws governing the maintenance/upkeep of said dwelling. Moreover, statutes, codes and ordinances of the City of Jackson, Mississippi. Neither was the apartment to be rented to the Plaintiff until it met housing requirements mandated by law.

201. Under the provisions of the statutes and/or laws Defendants were required to put the premises in a condition fit for human occupation before renting the Apartment and repair all subsequent dilapidations, other than those caused by the tenant's want of ordinary care, that rendered the premises untenantable.

202. At the time Defendants rented the premises to Plaintiff, Defendants either owned and had the duty to maintain and repair the Apartment; however, failed to maintain and make the necessary repairs, thus causing the Apartment to be unfit for human occupation, in that the

premises substantially failed to comply with those applicable building/housing code standards that materially affect the health and safety of the Plaintiff/tenant and the general public.

203. Specifically, as a proximate result of Defendants' failure to maintain and repair the Apartment/premises, at the time Plaintiff took possession, were uninhabitable and unfit for human occupation.

204. From the time the Plaintiff moved into the Apartment/premises, Plaintiff became increasingly aware of the numerous defective, dangerous, unsafe, unsanitary and hazardous, etc. conditions of the Apartment/premises described above, and others, including but not limited to those noted in her correspondences, notifying Defendants of such concerns.

205. Plaintiff repeatedly notified Defendants, both verbally and/or in writing, of the defective, dangerous and unsafe/unhealthy conditions of the Apartment/premises and requested that Defendants have them repaired; however, Defendants failed and refused, and continued to fail and refuse to repair residence/apartment, or any of them in *good faith*. Instead, Defendants have attempted to burden the Plaintiff and subject her to unlawful and illegal practices outlawed years ago in the state of Mississippi and the United States.

206. As a proximate result of Defendants' failure to repair the defective, dangerous, unsafe/unhealthy conditions or to have them repaired within a reasonable time, or at all, as alleged above, and in good faith, the Plaintiff suffered and continues to suffer emotional and physical distress, all to Plaintiff's general damage in the amount in excess of the sum of $58,000.00, with charges accruing at $1,000.00 per day that the Plaintiff was illegally removed from her residence, or an amount to be determined by the Court.

207. As a further proximate result of Defendants' failure to repair the defective, dangerous, unsafe/unhealthy conditions or to have repairs made within a reasonable time, or at

all as alleged above and in good faith, the Plaintiff was subjected to an unlawful eviction, theft of property, invasion of privacy, unlawful arrest, etc. All to Plaintiff's further damage of Defendants' willful and unlawful behavior supporting further damages in the approximate amount of $150,000.00 - with charges accruing at $2,500.00 per day that Plaintiff has been without her residence, or an amount to be determined by the Court.

208. Defendants failure to put the Apartment/premises into a condition fit for human occupation at the time of renting to the Plaintiff and Defendants' failure to repair the unsafe/unhealthy, defective and dangerous conditions or to have them repaired within a reasonable time and in good faith after the Plaintiff timely, properly and adequately notified Defendants of them, or at all, as alleged above, were oppressive and malicious within the meaning of statutes/laws governing said matters, as well as, of the Mississippi Landlord and Tenant Act and other applicable laws governing contracts, *in that said actions by Defendants have subjected the Plaintiff to cruel and unjust hardship in willful and conscious disregard of Plaintiff's rights and safety, entitling Plaintiff to an award of punitive damages.*

209. As a direct and proximate result of the ***breach*** *of the covenant to repair* of the lease by Defendants in their failing to maintain the premises/Apartment in a safe and healthy condition, Plaintiff was subjected to having to store items in the dining room and bedroom area of her Apartment. Efforts taken by the Plaintiff to lessen the damage to her property, etc.

210. Plaintiff believes the actions by Defendant Crews on behalf of Defendants has been done repeatedly and that she used such fraudulent practices to injure tenants, such as Plaintiff, and to have them evicted when they submitted complaints about the conditions of the Apartment and requested that repairs be made to correct the defects and/or concerns addressed.

211. The Plaintiff believes that documentation in the possession of the Defendants will reflect how they have used such unlawful practices to injure previous tenants.

212. The Plaintiff believes that the Defendants knowingly and/or should have known that they were renting the Apartment in disrepair. Plaintiff has requested from Defendants information as to the value of the premises/Apartment; however, to date, has not received the information from the Defendants wherein she is entitled to as a matter of law.

213. As a proximate result of Defendants' **breach** of implied *warranty of habitability* and Defendants' breach of the covenant to repair the defective and dangerous conditions or to have them repaired in a reasonable time or at all, Plaintiff has sustained general damages which is to be determined by the Court – such damages representing the difference between the actual rent paid and the reasonable rental value of the premises. At the present time, the Plaintiff cannot determine any additional damages in that Defendants have refused to provide requested information. The Plaintiff has timely requested the applicable documentation from the Defendants to determine such damages. However, Defendants have elected to violate the laws governing such matters.

214. As a further proximate result of Defendants' **breach** of Defendants' implied *warranty of habitability* and Defendants' failure to repair the defective, dangerous, unsafe and unhealthy/unsanitary conditions or to have them repaired within a reasonable time or at all, Plaintiff suffered discomfort, annoyance, threats from Defendant(s), distress, unlawful eviction, etc., all to Plaintiff's general damage at that time in the excess of the sum of $50,000.00, with charges accruing at $700 per day that the Plaintiff has been denied her apartment, or an amount to be determined by the Court.

215. Defendants have **breached** the lease and *covenant to repair* by failing to comply with all requirements of municipal, state and federal authorities, and by failing to observe all municipal ordinances and state and federal statutes.

216. The Plaintiff has duly performed all obligations, conditions, and covenants required by the Plaintiff by the lease agreement.

217. As a proximate result of Defendants' maintenance of the nuisance, Plaintiff suffered discomfort and annoyance, all to Plaintiff's general damage in an amount in excess of the sum of $30,000.00, with charges accruing at $200.00 per day that the Plaintiff was required to continue to live under such conditions and now not have access and use of the Apartment, and $250.00 per day from since Plaintiff has been unlawfully removed from her residence, or an amount to be determined by the Court.

218. In maintaining the nuisance, Defendants acted with full knowledge of the consequences and the damage being caused to Plaintiff. Despite this knowledge, Defendants failed to abate the nuisance by repairing the defective, dangerous, unsafe, unhealthy, etc. conditions of the premises or causing them to be repaired. Defendants failure to act in good faith and/or failure to act was both oppressive and malicious within the meaning of the statutes/laws governing said matters, in that it subjected the Plaintiff to cruel and unjust hardship in willful and conscious disregard of Plaintiff's rights and safety, entitling the Plaintiff to an award of punitive damages.

219. Defendants' failure to put the Apartment/premises in a condition fit for human occupation at the time of renting it to Plaintiff and Defendants' failure to repair the defective, dangerous, unsafe/unhealthy conditions or to have them repaired within a reasonable time after the Plaintiff notified Defendants of them or at all, as alleged above, were oppressive, retaliatory

and malicious within the meaning of statutes/laws governing said matter, in that they subjected Plaintiff to cruel and unjust hardship in willful and conscious disregard of Plaintiff's rights and safety, entitling Plaintiff to an award of punitive damages.

220. The Plaintiff did not terminate or request a termination of her Lease Agreement. See Lease Agreement attached hereto at **Exhibit "VI."** Defendants having sufficient information and timely notification that the Plaintiff did not want to relinquish her apartment; however, required that they make the necessary repairs as required by laws.

221. On January 12, 2006, Defendants threatened the Plaintiff with eviction – providing her with 3-Day Notice.

222. On January 12, 2006, in correspondence provided by Plaintiff, Defendants were timely, properly and adequately notified that the 3-Day Notice was in violation of the laws.

223. Retaliation by Defendants is prohibited by Fair Housing Act, Mississippi laws and/or other applicable laws governing said matters.

224. As a matter of law, the Mississippi Landlord and Tenant Act provides provisions for withholding of rent as well as relief for retaliatory actions by the landlord against a tenant for reporting wrongs and/or violations. See **Exhibit "IX"** attached hereto – Mississippi Code § 89-8-19 under section entitled, Research References, citing 40 ALR 3d 753.[9]

225. The threat (eviction notification) issued by Crews on behalf of Defendants coming **AFTER** receipt of notification and/or correspondence from the Plaintiff advising of their

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[9] **40 ALR 3d 753 – RETALIATORY EVICTION OF TENANT FOR REPORTING LANDLORD'S VIOLATION OF LAW**

> **§ 1[b] Related matters**
>
> Validity and construction of statute or ordinance **authorizing withholding** or payment into escrow of rent for *period during which premises **are not** properly maintained by landlord.*

unlawful/illegal practices; and Defendants carrying out of such threat through the illegal/unlawful eviction of the Plaintiff.

226. Defendants and having knowledge of Plaintiff's intent to file a Complaint in the applicable Court if they failed to comply with the laws.

227. That the Plaintiff seeks a remedy pursuant to the law herein.

STATEMENT OF PLAINTIFF'S INJURIES AND DAMAGES

228. Because of Defendants' discriminatory actions, Plaintiff incurred, loss of employment, economic losses and damages, including but not limited to expenses for moving and relocation, storage of goods, out-of-pocket costs, increased rent, loss of possessions and other compensatory damages stemming from her unwanted move and/or unlawful/illegal eviction.

229. Plaintiff has also suffered non-economic injuries, such as embarrassment, humiliation, anxiety, loss of self-esteem, deprivation of civil rights, constitutional rights, equal protection of laws, due process of laws, and other emotional pain and suffering.

230. The acts, conduct and/or omissions of the Defendants toward the Plaintiff were intentional, malicious, and in wanton or reckless disregard of the rights and feelings of Plaintiff, entitling Plaintiff to the additional award of punitive and/or exemplary damages.

JURY DEMAND

231. Plaintiff hereby demands a jury trial in this action.

PRAYER AND RELIEF SOUGHT

WHEREFORE, Plaintiff requests judgment against Defendants for *claims* and is entitled to the following relief and judgment. Further, the Plaintiff by reference incorporates all relief sought in the original complaint (See **Exhibit "I"**) as if fully copied herein and attached hereto:

232. Plaintiff is entitled to relief pursuant to 42 U.S.C. § 3617.

233. Plaintiff is entitled to relief pursuant to 42 U.S.C. § 3631.

234. The Plaintiff seeks compensatory damages for pain and suffering, loss of property and denial of constitutional and statutory rights pursuant to law in an amount of $1.5 million dollars.

235. The Plaintiff seeks Declaratory Relief that the acts of the Defendants to deny and intimidate persons based upon their race from contracting and obtain equal housing is a violation of the law and shall be immediately enjoined from further and similar actions.

236. The Plaintiff seeks punitive damages based upon Defendants' intentional, willful, malicious and wanton acts herein referenced.

237. That this Court determines and declares the requests and rights of Plaintiff and Defendants under the laws governing Landlord & Tenant matters, contract issues and other applicable laws and order that the Defendants return Plaintiff's residence to her, release to the Plaintiff the documents requested by her in her December 16, 2005 and February 3, 2006 correspondence, Requests for Documentation, wherein she is entitled as a matter of law. Said documentation is to be produced to the Plaintiff. If the Defendants fail to comply with the Order to be issued by this Court, sanctions in the amount of $150.00 per day is to be assessed against the Defendants and the applicable costs incurred in attorney fees and additional damage.

238. That this Court determines and declares the requests and rights of Plaintiff and Defendants under the laws governing Landlord & Tenant matters as well as other applicable laws governing same, and orders that an INJUNCTION and RESTRAINING ORDER against Defendants, its attorneys, employees or representatives be granted until the conclusion of this matter and/or lawsuit.

239. The Court determines and declares the requests and rights of Plaintiff and Defendants under the Lease Agreement as well as the applicable laws governing Landlord & Tenant as well as contract matter, fraud, etc., and so order that Defendants are to produce documentation of proof of repairs and costs associated with same. This Court find such ruling to be just considering the circumstances and evidence surrounding this case. This matter could not be resolved and the Defendant insisted making it difficult for the Plaintiff.

Plaintiff therefore seeks/requests Exemplary damages;

240. Plaintiff therefore seeks/requests Actual damages;

241. **Compensatory Damages** is defined as: "damages sufficient to amount to indemnify the injured person for the loss suffered." See *Black's Law Dictionary*, Eighth Edition.

242. Plaintiff therefore seeks/requests Compensatory damages;

243. Plaintiff therefore seeks/requests Discretionary damages;

244. Plaintiff therefore seeks/requests Foreseeable damages;

245. Plaintiff request special damages and reasonable attorney fees and cost associated with the litigation of this matter.

246. Plaintiff therefore seeks/requests Punitive damages;

247. The Court determines and declares the respective rights of Plaintiff and Defendants under the Lease Agreement as well as the applicable laws governing Landlord & Tenant matters and contract matters.

248. Interest on the damages according to law;

249. Prejudgment interest;

250. Judgment of and against the Defendants in an amount demanded by the Plaintiff and/or to be determined by the Court to correct the wrongs rendered the Plaintiff.

251. Judgment against the Defendants to repair the Plaintiff's Apartment to bring it into compliance with the applicable codes, statutes and laws governing habitability, etc.; and

252. Such further relief as the Court deems necessary to deter future unlawful practices by the Defendants.

253. Enter a declaratory judgment that the actions of the Defendants were discriminatory and illegal on the grounds of race under the federal Fair Housing Act;

254. Grant affirmative relief as may be necessary to remedy Defendants' past discriminatory practices and decisions and to insure Defendants do not discriminate on the basis of race in the future;

255. Award actual and compensatory damages to compensate Plaintiff for economic losses and damages, and non-economic injuries, such as emotional distress, loss of civil rights, loss of constitutional rights, humiliation and embarrassment caused by the discrimination of Defendants, in an amount to be proven at trial;

256. Grant Plaintiff an award of punitive and/or exemplary damages as a result of Defendants' deliberate, intentional, overt, willful and flagrant race-based discrimination, in an amount that reflects the duel purposes of punishment and deterrence;

257. Grant Plaintiff an award of attorneys fees, costs and pre-judgment and post-judgment interest incurred in bringing this action;

258. Grant such other and additional relief that the Court finds just and appropriate under the circumstances; and

259. Cost incurred; empanelling a JURY; and

260. **JURY DEMAND ON ISSUES SO TRIABLE.**

Respectfully submitted,

VOGEL NEWSOME, Plaintiff

Wanda Abioto, MSB No. 8156
1661 International Drive, Suite 400
Memphis, Tennessee 38120
Phone: (901) 725-3719
Facsimile: (901) 767-4441
E-Mail: Abioto@hotmail.com
COUNSEL FOR PLAINTIFF

ACKNOWLEDGMENT

I, Vogel Newsome herein certify that I have read the foregoing complaint and that it is true and correct to the best of my knowledge and belief.

VOGEL NEWSOME, Plaintiff

ABIOTO LAW CENTER PLLC

☐ Comment: The alleged discriminatory practices against which the employee's charge or opposition is directed need not be found to actually exist in order for the employee's activity in protesting to be protected under § 2000e-3(a), if the employee has acted on a reasonable and good-faith belief that the employer was engaging in unlawful employment practices.[6] Even if the employee's complaints are completely unfounded, the Act forbids employer retaliation for making them.[7]

Among employee activities that are protected against retaliatory discharge is the filing of formal unlawful employment practices charges with the EEOC[8] or a state employment practices commission.[9] The filing of charges is protected even if the charge contains collateral statements which are false and apparently malicious,[10] and this includes charges filed against a previous employer.[11] Also protected is an employee's participation in an EEOC investigation or proceeding, or his refusal to participate in proceedings commenced by another,[12] and protected participation in such an investigation or

1964 (42 USCS § 2000e-3(a)), making it an unlawful employment practice to discriminate against individual for participation in equal employment opportunity proceedings or activities. 11 ALR Fed 316.

6. EEOC Decision No. 71-1115, 1973 CCH EEOC Decisions ¶ 6201; EEOC Decision No. YCH 9-140, 1973 CCH EEOC Decisions ¶ 6075 (merits of a charge are irrelevant unless the charge is deliberately or maliciously false).

7. EEOC Decision No. 71-1545, 1973 CCH EEOC Decisions ¶ 6261.

8. Pettway v American Cast Iron Pipe Co. (CA5 Ala) 411 F2d 998, 11 ALR Fed 302, reh den (CA5 Ala) 415 F2d 1376.

9. Dobbins v International Brotherhood of Electrical Workers (DC Ohio) 292 F Supp 413.

10. Pettway v American Cast Iron Pipe Co. (CA5 Ala) 411 F2d 998, 11 ALR Fed 302, reh den (CA5 Ala) 415 F2d 1376 (letter to EEOC, treated as a petition for reconsideration of a charge filed as a result of an earlier suspension, made reference to possible bribery on the part of the employer to cover up its activities).

11. EEOC Decision No. 71-460, 1973 EEOC Decisions ¶ 6175 (employer violated § 2000e-(3)(a) by discharging an employee after learning he had filed charges of discrimination against a former employer). *Cf.* Barela v United Nuclear Corp. (DC NM) 317 F Supp 1217, affd (CA10 NM) 462 F2d 149 (injunctive relief granted against prospective employer's refusal to further process plaintiff's job application after learning that plaintiff had filed complaint against a former employer).

12. EEOC Decision No. 71-2312, 1973 CCH EEOC Decisions ¶ 6248 (discharge as a result of employee's refusal to assure EEOC investigator that employer did not discriminate because of race).

proceeding includes the submission of affidavits during the course of an investigation.[13]

Section 2000e-3(a) also provides "exceptionally broad" protection from retaliation against individuals who oppose unlawful employment practices.[14] Opposition has been held to encompass merely inquiring into an employer's employment practices in order to examine the possibility of discrimination,[15] as well as active protest against alleged unlawful discrimination with respect to terms and conditions of employment. Activities in opposition to unlawful employment practices that have been held to be protected under § 2000e-3(a) include oral accusations of racism[16] or other prohibited discrimination in employment;[17] circulating a petition protesting alleged racial discrimination;[18] participating in the organization c

13. Equal Employment Opportunity Com. v United Asso. of Journeymen etc. (DC Ohio) 311 F Supp 464.

14. Pettway v American Cast Iron Pipe Co. (CA5 Ala) 411 F2d 998, 11 ALR Fed 302, reh den (CA5 Ala) 415 F2d 1376. But cf. Ripp v Dobbs Houses, Inc. (DC Ala) 366 F Supp 205, where the court stated that § 2000e-3(a) clearly exists to protect an employee's avenue to complain to the EEOC, and concluded that a complaint alleging that a white employee was discharged because of his association with black employees and because he refused to discriminate against black employees makes no claim of interference with his access to the EEOC and is not protected by § 2000e-3(a); moreover, the court also held that the complaint failed to state a claim under § 2000e-2 in that the plaintiff suffered no detriment on account of his race. *Contra,* EEOC Decision No. 969, 1973 CCH EEOC Decisions ¶ 6193; EEOC Decision No. 71-1902, 1973 CCH EEOC Decisions ¶ 6281 (interracial associations are protected under § 2000e-2.). In this regard also see Gutwein v Easton Publishing Co. (Md) 325 A2d 740, 8 CCH Employment Practices Decisions ¶ 9728 (discharge of white employee because of his association with his black fiancee violated state statutory provision identical to 42 USCS § 2000e-2, prohibiting discharge of an individual because of his race).

Annotations: Actionability under state statutes of discrimination because of complaining party's association with persons of different race, color, or the like. 35 ALR3d 859.

Actionability, under Federal Civil Rights Act, of discrimination because complaining party's association with persons of different race, color, or the like. 6 ALR Fed 973.

15. EEOC Decision No. 72-0703, 1973 CCH EEOC Decisions ¶ 6328.

16. EEOC Decision No. 72-0975, 1973 CCH EEOC Decisions ¶ 6358.

17. EEOC Decision No. 71-1545, 1973 CCH EEOC Decisions ¶ 6261 ("pestering" for equal rights by woman employee).

18. EEOC Decision No. 70119, 1973 CCH EEOC Decisions ¶ 6068.

EXHIBIT "54"

CCH EEOC DECISIONS

Cited CCH EEOC DECISIONS (1973) ¶ . . . . .

1973

A reporter of decisions released by the Equal Employment Opportunity Commission from June 20, 1968, through January 19, 1973, with finding list and topical index.

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CHICAGO 60646

425 13TH STREET, N.W.
WASHINGTON 20004

EXHIBIT "53"

63 LC ¶9525); *Virgil v. American Telephone and Telegraph Co.*, 305 F. Supp. 44 (D. Cal. 1969, [2 EPD ¶10,114] 61 LC ¶9350).[5]

Any other result would present the danger that Charging Parties would be prejudiced by the failure of the Commission to act or by its acting untimely. Cf. *Antonopules v. Aerojet-General Corp.*, 295 F. Supp. 1390, 1396, [1 EPD ¶9958] 59 LC ¶9201 (E. D. Cal. 1968) where the court refused to dismiss a suit because the "result . . . would be anomalous in that (Charging Party) would in a sense be penalized because of the failure of the Commission to perform its statutory duties within the time allowed."

Summary of Investigation

Charging Party was hired by Respondent on June 4, 1968, as a bookkeeper. On November 21, 1969, Charging Party was discharged. Charging Party asserts that he had never been reprimanded in connection with his work, and that his supervisor was antagonistic because he is a Spanish surnamed American and because he filed a charge of discrimination against another employer.[6]

Respondent denies the charge and contends that Charging Party was discharged because he was belligerent, uncooperative and unable to perform work assigned.

One of three of Respondent's officials who participated in the decision to discharge Charging Party stated in an affidavit that he had contacted an employer against whom Charging Party had made a previous Commission charge. He states that the employer recommended that "we take action now for our own protection." He also stated that "the material in (Charging Party's personnel file) gave indication the (Charging Party) was not rationale (sic). The file reflected he had filed a Civil Rights charge with EEOC. I was sure the same thing would eventually happen to me." The record also reveals that Charging Party received salary increases of $50 and $75 per month in 1968, before Respondent became aware of Charging Party's earlier charge. There is no evidence on the record indicating that Respondent would have discharged Charging Party had it not been aware of Charging Party's earlier charge. Such an action based, at least in part, upon Charging Party's participation in Commission proceedings violates Section 704(a) of Title VII.[7]

Decision

There is reasonable cause to believe that Respondent engaged in an unlawful employment practice in violation of Section 704(a) of Title VII of the Civil Rights Act of 1964 by discharging Charging Party.

[¶ 6176] SENIORITY SYSTEM CONTINUES PAST DISCRIMINATION

Decision of Equal Employment Opportunity Commission, Decision No. 71-484, November 16, 1970.

Title VII—Civil Rights Act of 1964

EEOC Proceedings—Enlargement of Charge.—An issue regarding the legality of a seniority system, though not specifically raised by the charge, was appropriate for decision within the context of the employee's charge of racial discrimination that included an allegation of being continually moved around in his employment, which was governed by a bumping system.

Racial Discrimination—Seniority System—Past Practices.—In the absence of any showing that the maintenance of a seniority system that based employment decisions on length of service in a department and in job classifications rather than upon plant seniority and qualifications was essential to the safe and efficient operation of the employer's business, such a seniority system must be considered as continuing the unlawful discrimination previously practiced against Negroes in excluding them from certain departments and jobs because of their race.

---

[5] Cf. *Culpepper v. Reynolds Metal Company*, [2 EPD ¶10,138, 61 LC ¶9374] 421 F. 2d 888 (5th Cir., 1970), where the court held that invocation of statutory grievance procedures tolled the running of the 90-day limitation of Section 706(d).

[6] A copy of a newspaper article describing that charge was included in Charging Party's personnel record.

[7] The Charging Party's lack of expertise, in alleging discrimination because of national origin under Section 703(a), does not prevent this Commission from finding a violation under Section 704(a). *Sanchez v. Standard Brands, Inc.* — F. 2d — [2 EPD ¶10,252] 63 LC ¶9473, (5th Cir. 1970).

P|K
H PAGE KRUGER & HOLLAND
ATTORNEYS AND COUNSELORS AT LAW

Jamie D. Travis
jtravis@pagekruger.com

Page, Kruger & Holland, P.A.

Physical Address:
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Mailing Address:
P.O.Box 1163
Jackson, Mississippi 39215-1163

Telephone: (601) 420-0333
Facsimile: (601) 420-0033

Personal Information

- Born Hattiesburg, Mississippi, June 29, 1974

Education

- University of Southern Mississippi (B.S., 1996)
- Mississippi College, School of Law (J.D., 1999)

Professional Affiliations and Achievements

- Magnolia Bar Association
- The Mississippi Bar
- National Bar Association
- Charles Clark Chapter, American Inns of Court
- Mississippi Defense Lawyers Association
- Defense Research Institute

Bar Admissions

- All State and Federal Courts in Mississippi
- United State Court of Appeals for the Fifth Circuit

Practice Areas

- Civil Litigation
- Premises Liability
- Product Liability
- Personal Injury
- Insurance Bad Faith
- Medical Malpractice

EXHIBIT "52"

7/12/2008

Vogel Newsome

From: Vogel Newsome
Sent: Friday, March 31, 2006 8:36 AM
To: Linda Thomas
Subject: FW: Conflict Check
Importance: High

Linda:

FYI.

From: Vogel Newsome
Sent: Thursday, March 30, 2006 3:38 PM
To: Lawson Hester
Subject: FW: Conflict Check
Importance: High

Lawson:

I recently had a matter occur with a Constable of Hinds County, where I am presently considering. Would this present a conflict?

Thanks.

From: Cristie White
Sent: Thursday, March 30, 2006 3:21 PM
To: PKH All
Subject: Conflict Check

Billing, please assign a PKH number

Thanks

CASE FILE INFORMATION

RE: Notice of Claim – Jason [redacted] v. Hinds County Sheriff's Department

PK&H FILE NO:

INSURED: Hinds County Sheriff Department

CARRIER: **Mr. Blair [redacted]**
[redacted] Specialty Co., Inc.
[redacted] Insurance
Post Office Box [redacted]
Indianapolis, IN 46240-0096
Main #317-[redacted]

EXHIBIT "51"

Main Fax #317- [redacted]

CHRIS [redacted]

Claim #E [redacted]

PLAINTIFF'S ATTYS: Pro Se

CLERK:

JUDGES:

BILLING INFO:
Rates: $135.00 and $55.00

ATTORNEY: J. Lawson Hester
ASSOCIATE:

Date: Tue, 16 May 2006 07:40:52 -0700 (PDT)

From: "v newsome" <[redacted]> View Contact Details Add Mobile Alert
Yahoo! DomainKeys has confirmed that this message was sent by yahoo.com. Learn more

Subject: VOGEL NEWSOME: PKH's Termination of Employment

To: lbaine3@pkh.net, tpage@pkh.net, lthomas@pkh.net

To Louis/Tommy/Linda:

This email correspondence is being submitted to confirm that as of Monday, May 15, 2006, my employment with Page, Kruger & Holland, P.A. ("PKH") has been terminated – as Mr. Baine put it "effective immediately." This termination has been approved by the shareholders of PKH. Those present at the Termination Meeting were as follows:

Louis J. Baine, III (shareholder)
Thomas Y. Page, Jr. (shareholder)
Linda Thomas (Office Administrator); and
Myself/Vogel Newsome (Employee being terminated)

I requested that PKH provide me with written documentation as to the reasons for my termination and/or documentation acknowledging termination; however PKH declined to do so and advised they would not provide any written documentation.

My understanding as to the reasons for my termination is as follows:

1. PKH was advised of a lawsuit I filed in the Hinds County Court.
   When I requested who informed PKH of this information, PKH declined to provide me with this information
   PKH acknowledged that it checked into whether a lawsuit was filed and confirmed going to the courthouse to review the file and obtaining documents.
   When I requested information regarding how long PKH was aware of the matter I am involved in, PKH advised they have known for quite some time. When requesting specific time frame, PKH declined to give me an exact amount of time they have known about it.

2. PKH acknowledged they had conducted an investigation and it revealed:
   That I had used PKH equipment to conduct personal business
   Faxes sent revealed the PKH name across the top
   Faxes sent wound up in the court file and they did not want their name associated with the lawsuit
   Personal documents were saved on PKH equipment and they have reviewed documents and emails on my computer
   Great deal of time was used to conduct personal business; however, PKH failed to produce how much time was used for personal business.

   (a) While I acknowledged I used PKH equipment for personal business, I shared others in the firm did as well and PKH did not and does not deny that other employees use PKH equipment for personal business.

   (b) I acknowledged that I used PKH fax machine for personal business as did other employees at PKH who used it for personal business – PKH did not and does not deny that other employees use their fax machine to send personal faxes.

   (c) According to PKH the name appear at the top of all faxes that are transmitted from their machines.

   (d) I acknowledged that I saved personal documents to the computer as did other employees of PKH – PKH did not and does not deny that other employees save personal documents to their computer

EXHIBIT "50"

(e) PKH acknowledge that it was me that they have been observing and me that they investigated while it having knowledge that other employees engaged in the same practices as I.

(f) While PKH stated that a great deal of my time was used to conduct personal business – which was denied by me, it failed to explain how it affected my work performance.

(g) PKH acknowledged that no personal documentation by me was ever placed on PKH letterhead.

3. PKH acknowledged they conduct conflict checks; however, did not make it clear as to what that had to do with my termination. While PKH having knowledge that if I believed there was a conflict regarding me, they were notified of concerns by me; however, elected not to respond.

4. PKH was made aware of my concerns that the action they have taken against me is prejudicial; however, PKH denied such.

5. PKH acknowledged that they were aware of my personal activities for quite some time; however, elected not to address them or to notify me of any wrongs (if wrong at all) that I may have been committing. Concerns of said failure by PKH was made known to them.

6. PKH was made aware of my displacement situation – information PKH had prior to the meeting (can be based on their long time monitoring and investigation and being notified of my lawsuit, etc.)

7. PKH was made aware of my concerns of my inability of being able to obtain employment elsewhere in that it is apparent (them being notified of lawsuit) that efforts will be taken to prevent me from obtaining gainful employment elsewhere; however, PKH denied they would do anything like that and would handle the matter as they have with others when employment is verified.

8. While PKH acknowledged that I may bring lawsuits and it is of no business to them, the action taken on May 15, 2006, to terminate my employment was to the contrary and PKH acknowledge termination was a result of the lawsuit I filed in the Hinds County Courthouse that was brought to their attention.

9. While PKH acknowledge an investigation was conducted on me and I requested that PKH provide me with written documentation for their termination, PKH declined to provide me with documentation.

10. My concerns as to being singled out when others at PKH did the same things were made known to PKH; however, PKH had already made up their mind that they were terminating my employment.

11. PKH acknowledged that the shareholders were in consensus/agreement with terminating my employment.

In that I believe that I have been unlawfully terminated, I am requesting that PKH preserve my employment records, any other documents, audio, etc. regarding my employment and reasons for termination.

In that PKH was given an opportunity to provide me with written documentation as to their reasons for my termination, I will only conclude that any other reasons which may be offered **AFTER** the fact/termination will be pretext in nature – provided in an effort to cover-up/shield PKH's unlawful employment action taken against me.

Sincerely,

Vogel Newsome

Name:	**Alan Lee Smith**
Firm:	**Baker Donelson Bearman Caldwell & Berkwoitz**
Address:	**4268 I-55 N**
City, State, Zip:	**Jackson MS 39211**
Address:	**P O Box 14167**
City, State, Zip:	**Jackson, MS 39236-4167**
County:	**Hinds**
Telephone:	**(601) 351-2400**
Fax:	**(601) 351-2424**
E-mail:	**asmith@bakerdonelson.com**
Status:	**Active**
Admit Date:	**09/24/1996**

Name:	**Albert Benjamin Smith III**
Firm:	**Circuit Court Judge**
Address:	**P O Drawer 478**
City, State, Zip:	**Cleveland, MS 38732-0478**
County:	
Telephone:	**(662) 843-3346**
Status:	**Active**
Admit Date:	**04/01/1984**

Name:	**Allison W Smith**
Firm:	**Whitledge & Assoc**
Address:	**309 Carr St**
City, State, Zip:	**Fulton KY 42041**
Address:	**P O Box 1557**
City, State, Zip:	**Fulton, KY 42041**
Telephone:	**(270) 472-5500**
Fax:	**(270) 472-5501**
E-mail:	**asmith_spl@bellsouth.net**
Status:	**Inactive**
Admit Date:	**05/04/2004**

Name:	**Alvin L Smith Jr.**
Firm:	**Attorney at Law**
Address:	**136 Magnolia St**
City, State, Zip:	**Denver, CO 80220-6010**
E-mail:	**sal10@webtv.net**
Status:	**Active**
Admit Date:	**08/01/1949**

Name:	**Amanda Whaley Smith**
Firm:	**Smith Whaley**
Address:	**120 E College Ave**
City, State, Zip:	**Holly Springs MS 38635**
Address:	**P O Drawer 849**
City, State, Zip:	**Holly Springs, MS 38635-0849**
County:	**Marshall**
Telephone:	**(662) 252-3003**
Fax:	**(662) 252-3006**
E-mail:	**awhaley@smithlaw.tv**
Status:	**Active**
Admit Date:	**09/24/2002**

Name:	**Amelia Y Smith**
Address:	**2207 Sheffield Dr**
City, State, Zip:	**Jackson, MS 39211**
County:	**Hinds**
Status:	**Inactive**
Admit Date:	**05/01/1982**

Exhibit "49"

Name:	**James W Nobles Jr.**
Firm:	**Attorney at Law**
Address:	**431 Tombigbee St**
City, State, Zip:	**Jackson MS 39201**
Address:	**P O Box 1733**
City, State, Zip:	**Jackson, MS 39215-1733**
County:	**Hinds**
Telephone:	**(601) 948-1757**
Fax:	**(601) 354-0903**
E-mail:	**nobsbar@bellsouth.net**
Status:	**Active**
Admit Date:	**10/01/1966**

Name:	**J T Noblin**
Firm:	**US District Court Southern Distof MS**
Address:	**P O Box 945**
City, State, Zip:	**Jackson, MS 39205-0945**
County:	**Hinds**
Telephone:	**(601) 965-4440**
Fax:	**(601) 965-4935**
E-mail:	**j.t._noblin@mssd.uscourts.gov**
Status:	**Active**
Admit Date:	**08/01/1964**

Name:	**William C Noblin Jr.**
Firm:	**McDavid Noblin & West**
Address:	**248 E Capitol St Ste 840**
City, State, Zip:	**Jackson, MS 39201**
County:	**Hinds**
Telephone:	**(601) 948-3305**
Fax:	**(601) 354-4789**
E-mail:	**noblin@mnwlaw.com**
Status:	**Active**
Admit Date:	**04/01/1971**

Name:	**Carol S Noblitt**
Firm:	**Attorney at Law**
Address:	**6235 Bell Creek Ct**
City, State, Zip:	**Grand Bay, AL 36541**
Telephone:	**(228) 769-5114**
Fax:	**(228) 762-0185**
E-mail:	**noblittol@aol.com**
Status:	**Active**
Admit Date:	**09/25/1990**

EXHIBIT "48"

PAGE, KRUGER & HOLLAND, P.A.
10 Canebrake Boulevard, Suite 200, Jackson MS 39232-2215
Post Office Box 1163, Jackson MS 39215-1163
PHONE: (601) 420-0333; FAX (601) 420-0033; MESSAGES: (601) 420-8188

Main Supply Room..... 228	Main Conf. Room.....254	Intercom..... PAGE ALL*
2nd Supply Room..... 259	2nd Conf. Room.....237	Kitchen..... 234
3rd Supply Room..... 270	3rd Conf. Room.....269	Computer Room..... 187
War Room across/LGB,III 178	War Room across/kitchen.....176	Main Conference Speaker..... 267

ATTORNEYS		SECRETARIES	
Baine, Jr., Louis	118 (DO NOT ask who is calling)	Suzanne Saucier	265
Baine III, Louis*	122	Lee Ann Barber	231
Carr, Susan	130	Vogel Newsome	277
Chapman, John	117	Cheryl Ross	246
Copeland III, Clyde (Trey)*	146	Jackie Sullivan	272
Gadow, Jan	153	Cristie White	225
Graham, Kris	120	Susan Chrislip	226
Hall, Pelicia	142	Cristie White	225
Harmon, Stuart*	123	Cheryl Ross	246
Hill, Jr., Wright*	114	Erica Sweeney	233
Holland, James*	140 (DO NOT ask who is calling)	Julie Horn	232
Kruger, Stephen*	112	Susan Chrislip	226
Laird III, Gray*	129	Susan Dancey	260
Lee, Preston	116	Erica Sweeney	233
Page, Tommy*	111 (DO NOT PAGE)	Janet Robertson	235
Ray, Jackie	124	Karen Duke	271
Risher, Faith	155	Vogel Newsome	277
Smith III, A.B. (Trey)	136 (DO NOT ask who is calling)	Nicole Vanderford	248
Street, Martin	145	Tonya Pruitt	224
Tolle, Michelle	128	Karen Duke	271
Travis, Jamie	138 (DO NOT ask who is calling)	Lee Ann Barber	231
Treadway, Marc	133	Tonya Pruitt	224
Vines, W. Matt*	115	Nicole Vanderford	248
Weeks, Jason	119	Susan Dancey	260
Wolf, Michael	163	Suzanne Saucier	265

* = Shareholder

NON-SECRETARIAL STAFF:

Bruce, Julia	Legal Assistant	143
Chase, Brenda	Legal Assistant	121
Edwards, Melissa	File Clerk (Silica)	156
Fedrick, Joanne	Accounts Receivable/Billing	149
Freeman, Crissie	Accounts Receivable/Billing	150
Grant, Roy	Legal Assistant/Investigator	151
Green, Kelli	Legal Assistant	171
Groat, Shawn	File Clerk (Silica/Drug)	282
Hall, Angela	Legal Assistant	162
Hall, Dawn	Legal Assistant (JDH)	139
Harris, Leah	Legal Assistant	152
Herring, Terri	Legal Assistant/ Subrogation	174
Jordan, Jessica	Administrative Assistant	179
Maroney, Christine	Legal Assistant	172
McDaniel, Ginger	Legal Assistant	113
McNeil, Trey	Accounts Receivable/Billing	144
Mikkelson, Tiffany	Law Clerk	281
Newsome, Rebecca	Legal Assistant	158
Noblin, John	Legal Assistant	175
Rollins, Casey	Receptionist	110
Thomas, Linda	Office Manager	147

RUNNERS: Tasha Brown, Joseph Cascio, Paul Pettitt, Wesley Ray, Alex Yarbrough

G:\LISTS\EXTENTION LIST\EXTENSION LIST.DOC

Exhibit "47"

PAGE, KRUGER & H[illegible]LAND, P.A.

10 Canebrake Boulevard, Suite 200, Jackson MS 39232-2215
Post Office Box 1163, Jackson MS 39215-1163
Phone: 601-420-0333; Fax: 601-420-0033; Messages: 601-420-8188

Main Supply Room	228	Main Conf. Room	254	Intercom	PAGE ALL*
2nd Supply Room	259	2nd Conf. Room	237	Kitchen	234
3rd Supply Room	270	3rd Conf. Room	269	Computer Room	187
War Room across/LGB,III	178	War Room across/kitchen	176	Main Conference Speaker	267

ATTORNEYS			SECRETARIES	
Baine, Jr., Louis	118	(DO NOT ask who is calling)	Kim Henderson	265
Baine III, Louis*	122		Lee Ann Barber	231
Carr, Susan	130		Tonya Pruitt	224
Chapman, John	117		Cheryl Ross	246
Copeland III, Clyde (Trey)*	146		Stacie Crenshaw	257
Fraser, Raymond	127		Vogel Newsome	277
Gadow, Jan	153		Cristie White	225
Graham, Kris	120		Susan Chrislip	226
Hall, Pelicia	142		Stacie Crenshaw	257
Harmon, Stuart*	123		Cheryl Ross	246
Hester, Lawson*	125		Cristie White	225
Hill, Faith	155		Vogel Newsome	277
Hill, Jr., Wright*	114		Lane Yearby	233
Holland, James*	140	(DO NOT ask who is calling)	Julie Horn	232
Kruger, Stephen*	112		Susan Chrislip	226
Laird III, Gray*	129		Susan Dancey	260
Lee, Preston	116		Lane Yearby	233
McDaniel, Allen	175		Nicole Vanderford	248
Page, Tommy*	111	(DO NOT PAGE)	Janet Robertson	235
Patel, Mona	139		Julie Horn	232
Ray, Jackie	124		Karen Goldman	271
Smith III, A.B. (Trey)	136	(DO NOT ask who is calling)	Nicole Vanderford	248
Street, Martin	145		Tonya Pruitt	224
Tolle, Michelle	128		Karen Goldman	271
Travis, Jamie	138	(DO NOT ask who is calling)	Lee Ann Barber	231
Treadway, Marc	133		Janet Robertson	235
Vines, W. Matt*	115		Nicole Vanderford	248
Weeks, Jason	119		Susan Dancey	260
Wolf, Michael*	163		Kim Henderson	265

* = Shareholder

NON-SECRETARIAL STAFF:

Bruce, Julia	Legal Assistant (SPK & SBH)	143
Fedrick, Joanne	Accounts Receivable/Billing	149
Freeman, Crissie	Accounts Receivable/Billing	150
Grant, Roy	Legal Assistant/Investigator	151
Green, Kelli	Legal Assistant (Silica)	171
Groat, Shawn	Legal Assistant (Silica/Drug)	~~282~~ 121
Hall, Angela	Legal Assistant	162
Harris, Leah	Legal Assistant (Silica)	152
Herring, Terri	Legal Assistant/ Subrogation (Silica)	174
Lewis, Nijah	Legal Assistant (L. Hester)	108
Maroney, Christine	Legal Assistant (Silica)	172
McLendon, Annabeth	Receptionist	110
McNeil, Trey	Accounts Receivable/Billing	144
Newsome, Rebecca	Legal Assistant	158
[redacted]		
Page, Thomas, Jr.	File Clerk (Silica)	156
Rollins, Casey	Office Assistant	179
Thomas, Linda	Office Manager	147
Sullivan, Ginger	Legal Assistant (TYP & CXC)	113

Nobody but nadlett

RUNNERS: Alex Yarbrough, Andrew Rueff & Ben Ratliff

1/18/06

G:\LISTS\EXTENTION LIST\EXTENSION LIST.DOC

Vogel Newsome

From: Susan O. Carr

Sent: Monday, February 28, 2005 5:22 PM

To: Vogel Newsome

Vogel, First and foremost, you are doing an excellent job. These are just a few things that I thought of that might save us both some time and help things flow smoother.

1. Pleadings. All pleadings shall be double-spaced unless I say otherwise.

2. Discovery. When filing interrogatories, requests for production of documents and requests for admissions, we retain the originals and the copies go to the attorneys. The Notice of Service only is filed with the Court, not the actual pleadings.

3. When I say prepare discovery for filing, that means to include the Notice of Service as well as the letter to the clerk.

4. Spell check. Please run spell check on all drafts. Also, please proof all drafts of dictation before you bring to me. This is the VERY important. I understand that I produce a lot of work and you also work with another associate but, I always prefer quality to quantity. My work product reflects directly on me and PKH so it must be done correctly.

5. JDH. Please copy JDH on all correspondence in his cases.
TYP. Do not copy or blind copy him on anything unless I specifically ask you to.

6. Caselist. Please keep my caselist updated and complete. Remember to remove any case that we settle or close.

7. Page numbers should not go on the first page of pleadings. Remember to suppress the page number on the first page.

8. Filing. Filing should be done for me on a weekly basis. It is harder to catch up once the stack piles up. If you will put the file cart in my office I will be happy to place the filing as it comes in, in the appropriate folder.

9. Timesheets. It is imperative that time is entered timely as to alleviate any fines. You are doing a wonderful job at this.

11. Dictation. If you get behind on dictation, please let me know. I don't or won't know unless you tell me.

12. Phone Calls. On most occasions, phone calls from adjuster, other attorneys, etc. go to my voice mail, but if they go to you it is very important to get complete info. If it is an adjuster, make every attempt to get what they need. Also, do not put an adjuster on hold. Adjusters are how we get cases, we must keep them happy.

Please let me know if you have questions or the work gets overwhelming. If so, we can work together to prioritize and make your life easier. Thanks again for all your hard work. SOC

EXHIBIT "45"

Vogel Newsome

From: Susan O. Carr

Sent: Monday, February 28, 2005 5:22 PM

To: Vogel Newsome

Vogel, First and foremost, you are doing an excellent job. These are just a few things that I thought of that might save us both some time and help things flow smoother.

1. Pleadings. All pleadings shall be double-spaced unless I say otherwise.

2. Discovery. When filing interrogatories, requests for production of documents and requests for admissions, we retain the originals and the copies go to the attorneys. The Notice of Service only is filed with the Court, not the actual pleadings.

3. When I say prepare discovery for filing, that means to include the Notice of Service as well as the letter to the clerk.

4. Spell check. Please run spell check on all drafts. Also, please proof all drafts of dictation before you bring to me. This is the VERY important. I understand that I produce a lot of work and you also work with another associate but, I always prefer quality to quantity. My work product reflects directly on me and PKH so it must be done correctly.

5. JDH. Please copy JDH on all correspondence in his cases. TYP. Do not copy or blind copy him on anything unless I specifically ask you to.

6. Caselist. Please keep my caselist updated and complete. Remember to remove any case that we settle or close.

7. Page numbers should not go on the first page of pleadings. Remember to suppress the page number on the first page.

8. Filing. Filing should be done for me on a weekly basis. It is harder to catch up once the stack piles up. If you will put the file cart in my office I will be happy to place the filing as it comes in, in the appropriate folder.

9. Timesheets. It is imperative that time is entered timely as to alleviate any fines. You are doing a wonderful job at this.

11. Dictation. If you get behind on dictation, please let me know. I don't or won't know unless you tell me.

12. Phone Calls. On most occasions, phone calls from adjuster, other attorneys, etc. go to my voice mail, but if they go to you it is very important to get complete info. If it is an adjuster, make every attempt to get what they need. Also, do not put an adjuster on hold. Adjusters are how we get cases, we must keep them happy.

Please let me know if you have questions or the work gets overwhelming. If so, we can work together to prioritize and make your life easier. Thanks again for all your hard work. SOC

EXHIBIT "45"

Vogel Newsome

From: Tommy Page
Sent: Thursday, June 16, 2005 9:16 AM
To: Vogel Newsome
Subject: RE: This morning

You do it well.

Thomas Y. Page, Esq.
PAGE, KRUGER & HOLLAND, P.A.
10 Canebrake Blvd., Suite 200 [39232-2215]
Post Office Box 1163
Jackson, MS 39215-1163
☎ **Telephone:** 601-420-0333
☎ **Facsimile:** 601-420-0033
✉ **Email:** tpage@pkh.net

From: Vogel Newsome
Sent: Thursday, June 16, 2005 8:54 AM
To: Tommy Page
Subject: RE: This morning

Why thank you. I strive to dress and carry myself in the manner in which PKH requires. ☺

From: Tommy Page
Sent: Thursday, June 16, 2005 8:19 AM
To: Vogel Newsome
Subject: This morning

You looked very smart & professional as you walked toward the building!

Thomas Y. Page, Esq.
PAGE, KRUGER & HOLLAND, P.A.
10 Canebrake Blvd., Suite 200 [39232-2215]
Post Office Box 1163
Jackson, MS 39215-1163
☎ **Telephone:** 601-420-0333
☎ **Facsimile:** 601-420-0033
✉ **Email:** tpage@pkh.net

EXHIBIT "44"

Name:	**John M Futrell**
Firm:	**Lee Futrell & Perles**
Address:	**201 St Charles Ave Ste 2409**
City, State, Zip:	**New Orleans, LA 70170**
Telephone:	**(504) 569-1725**
Fax:	**(504) 569-1726**
E-mail:	**jfutrell@leefutrell.com**
Status:	**Active**
Admit Date:	**05/01/1981**

Name:	**Mary Marvel Fyke**
Firm:	**Marcie Fyke**
Address:	**167 Blue Heron Cove**
City, State, Zip:	**Waveland, MS 39576**
County:	**Hancock**
Telephone:	**(601) 918-0658**
E-mail:	**marciefyke@bellsouth.net**
Status:	**Active**
Admit Date:	**09/27/1990**

Name:	**Paul D Fyke**
Address:	**1 Harborside Pl #722**
City, State, Zip:	**Jersey City, NJ 07311**
Telephone:	**(212) 766-2555**
E-mail:	**pdfyke@earthlink.net**
Status:	**Inactive**
Admit Date:	**05/01/1974**

EXHIBIT "43"

Name:	**James Virgil Stowe III**
Address:	**631 Clearview Rd**
City, State, Zip:	**Birmingham, AL 35226**
Status:	**Inactive**
Admit Date:	**05/04/2004**

Name:	**Eric Stracener Jr.**
Firm:	**Hawkins Stracener & Gibson PLLC**
Address:	**129 B S President St**
City, State, Zip:	**Jackson MS 39201**
Address:	**P O Box 24627**
City, State, Zip:	**Jackson, MS 39225-4627**
County:	**Hinds**
Telephone:	**(601) 969-9692**
Fax:	**(601) 914-3580**
E-mail:	**eric@hsglawfirm.net**
Status:	**Active**
Admit Date:	**09/24/1996**

Name:	**Stacey Perkins Stracener**
Firm:	**Carroll Warren & Parker**
Address:	**188 E Capitol Ste 1200**
City, State, Zip:	**Jackson MS 39201**
Address:	**P O Box 1005**
City, State, Zip:	**Jackson, MS 39215-1005**
County:	**Hinds**
Telephone:	**(601) 592-1010**
E-mail:	**sstracener@cwplaw.com**
Status:	**Active**
Admit Date:	**09/24/1996**

Name:	**Richard L Stradley**
Firm:	**Attorney at Law**
Address:	**216 New Center Rd**
City, State, Zip:	**Sevierville, TN 37876**
Telephone:	**(307) 527-5929**
E-mail:	**junkmail@rstradley.org**
Status:	**Inactive**
Admit Date:	**05/01/1975**

Name:	**Michael W Strahan**
Firm:	**Greensfelder Hemker & Gale PC**
Address:	**10 S Broadway Ste 2000**
City, State, Zip:	**St Louis, MO 63102**
Telephone:	**(314) 516-2657**
Fax:	**(314) 516-2693**
E-mail:	**mws@greensfelder.com**
Status:	**Active**
Admit Date:	**04/27/1999**

Exhibit "42"

7/12/2008

Name:	**John D Hawkins**
Firm:	**Grimes Goebel Grimes Hawkins & Gladfelter**
Address:	**1023 Manatee Avenue W**
City, State, Zip:	**Bradenton FL 34205**
Address:	**P O Drawer 1550**
City, State, Zip:	**Bradenton, FL 34206-1550**
Telephone:	**(941) 748-0151**
Fax:	**(914) 748-0158**
E-mail:	**jhawkins@grimesgoebel.com**
Status:	**Inactive**
Admit Date:	**01/01/1979**

Name:	**John F Hawkins**
Firm:	**Hawkins Stracener & Gibson, PLLC**
Address:	**129-B S President St**
City, State, Zip:	**Jackson MS 39201**
Address:	**P O Box 24627**
City, State, Zip:	**Jackson, MS 39225-4627**
County:	**Hinds**
Telephone:	**(601) 969-9692**
Fax:	**(601) 914-3580**
E-mail:	**john@hsglawfirm.net**
Status:	**Active**
Admit Date:	**09/30/1993**

Name:	**Julie Adams Hawkins**
Firm:	**Aultman Tyner Ruffin Bell & Swetman LTD**
Address:	**315 Hemphill St**
City, State, Zip:	**Hattiesburg MS 39401**
Address:	**P O Drawer 750**
City, State, Zip:	**Hattiesburg, MS 39403-0750**
County:	**Forrest**
Telephone:	**(601) 583-2671**
Fax:	**(601) 583-2677**
E-mail:	**jhawkins@aultmantyner.com**
Status:	**Active**
Admit Date:	**10/05/2005**

Name:	**Rebecca Wiggins Hawkins**
Firm:	**Phelps Dunbar**
Address:	**111 E Capitol St Ste 600**
City, State, Zip:	**Jackson MS 39201-2122**
Address:	**P O Box 23066**
City, State, Zip:	**Jackson, MS 39225-3066**
County:	**Hinds**
Telephone:	**(601) 352-2300**
Fax:	**(601) 360-9777**
E-mail:	**hawkinsr@phelps.com**
Status:	**Active**
Admit Date:	**10/01/1990**

Name:	**Shannon W Hawkins**
Address:	**805 2nd St #A**
City, State, Zip:	**Gulfport, MS 39501**
County:	**Harrison**
Telephone:	**(228) 863-6207**
Fax:	**(228) 863-6148**
E-mail:	**shannon@seasidetitlellc.com**
Status:	**Suspended: Contact Membership Department**
Admit Date:	**04/26/1990**

Name:	**Tammy L Barham**
Firm:	**Butler Snow O'Mara Stevens & Cannada**
Address:	**210 E Capitol St Ste 1700**
City, State, Zip:	**Jackson MS 39201**
Address:	**P O Box 22567**
City, State, Zip:	**Jackson, MS 39225-2567**
Telephone:	**(601) 985-4539**
Fax:	**(601) 985-4500**
E-mail:	**tammy.barham@butlersnow.com**
Status:	**Active**
Admit Date:	**12/28/1995**

Name:	**David W Baria**
Firm:	**Baria Hawkins & Stracener**
Address:	**544 Main St**
City, State, Zip:	**Bay St Louis, MS 39520**
Telephone:	**(228) 469-0785**
Fax:	**(228) 466-9233**
E-mail:	**david@bfhslaw.com**
Status:	**Active**
Admit Date:	**09/27/1990**

Name:	**E Claire Barker**
Firm:	**Whittington & McGehee**
Address:	**229 Main St**
City, State, Zip:	**McComb MS 39648**
Address:	**P O Box 1919**
City, State, Zip:	**McComb, MS 39649**
Telephone:	**(601) 684-8888**
Fax:	**(601) 684-9709**
E-mail:	**ec_barker@yahoo.com**
Status:	**Active**
Admit Date:	**05/04/2004**

Name:	**Harold J Barkley III**
Firm:	**US Bankruptcy Court**
Address:	**703 Hwy 145 N**
City, State, Zip:	**Aberdeen, MS 39730**
Telephone:	**(662) 319-3542**
Fax:	**(662) 369-2635**
E-mail:	**harold_barkley@msnb.uscourts.gov**
Status:	**Active**
Admit Date:	**09/12/1990**

Name:	**Harold J Barkley Jr.**
Firm:	**Attorney at Law**
Address:	**9 Lakeland Cir**
City, State, Zip:	**Jackson MS 39216**
Address:	**P O Box 55849**
City, State, Zip:	**Jackson, MS 39296-5849**
Telephone:	**(601) 362-7153**
Fax:	**(601) 366-7442**
E-mail:	**hjbms@aol.com**
Status:	**Active**
Admit Date:	**08/01/1963**

Name:	**C Claiborne Barksdale**
Firm:	**Barksdale Reading Institute**
Address:	**1003 Jefferson Ave**
City, State, Zip:	**Oxford, MS 38865**
Telephone:	**(662) 236-5600**
Fax:	**(662) 236-5611**
E-mail:	**barksdac@msreads.org**

EXHIBIT "41"

Name:	**Louis A Fuselier**
Address:	**121 Northpointe Pkwy**
City, State, Zip:	**Jackson, MS 39211**
Telephone:	**(601) 859-7733**
Fax:	**(601) 859-0014**
E-mail:	**lfuselier@mad.lib.ms.us**
Status:	**Active**
Admit Date:	**08/01/1964**

Name:	**David Carson Futch**
Firm:	**Attorney at Law**
Address:	**4900 Main St**
City, State, Zip:	**Moss Point MS 39563**
Address:	**P O Box 1149**
City, State, Zip:	**Pascagoula, MS 39568**
Telephone:	**(228) 474-7003**
Fax:	**(228) 475-8970**
E-mail:	**dcfutch@cableone.net**
Status:	**Active**
Admit Date:	**04/15/1999**

Name:	**Elizabeth J Futrell**
Firm:	**Jones Walker Waechter**
Address:	**201 St Charles Ave Ste 5100**
City, State, Zip:	**New Orleans, LA 70170-0001**
Telephone:	**(504) 582-8261**
Fax:	**(504) 589-8260**
E-mail:	**efutrell@joneswalker.com**
Status:	**Inactive**
Admit Date:	**05/01/1981**

Name:	**John M Futrell**
Firm:	**Lee Futrell & Perles**
Address:	**201 St Charles Ave Ste 2409**
City, State, Zip:	**New Orleans, LA 70170**
Telephone:	**(504) 569-1725**
Fax:	**(504) 569-1726**
E-mail:	**jfutrell@leefutrell.com**
Status:	**Active**
Admit Date:	**05/01/1981**

Name:	**Mary Marvel Fyke**
Firm:	**Barla Fyke Hawkins & Stracener**
Address:	**129-B S President St**
City, State, Zip:	**Jackson MS 39201**
Address:	**P O Box 24627**
City, State, Zip:	**Jackson, MS 39225-4627**
Telephone:	**(601) 969-9692**
Fax:	**(601) 914-3580**
E-mail:	**marcie@bfhslaw.com**
Status:	**Inactive**
Admit Date:	**09/27/1990**

Name:	**P D Fyke**
Address:	**90 W Broadway Apt 4**
City, State, Zip:	**New York, NY 10007**
Telephone:	**(212) 766-2555**
Fax:	**(212) 766-2702**
E-mail:	**pdfyke@earthlink.net**
Status:	**Inactive**
Admit Date:	**05/01/1974**

MSN Hotmail [redacted] Today | Mail | Calendar | Contacts

[redacted]

Reply | Reply All | Forward | Delete | Junk | Put in Folder | Print View | Save Address

From :	David Baria <david@bfhslaw.com>
Reply-To :	<david@bfhslaw.com>
Sent :	Friday, June 27, 2003 3:38 PM
To :	"'Vogel Newsome'" <[redacted]
CC :	"David Baria" <David@lawsvr.local>, "Eric Stracener" <Eric@lawsvr.local>, "John Hawkins" <John@lawsvr.local>, "Marcie Fyke" <Marcie@lawsvr.local>
Subject :	RE: PAYCHECK

Inbox

Vogel,

You will have a paycheck which will include the entirety of the most recent pay period(from 6/15-6/30), though you did not work several days during that period. The firm does not provide vacation pay.

Best regards,

David Baria
Baria Fyke Hawkins & Stracener, PLLC
129B South President St.
P.O. Box 24627
Jackson, MS 39225-4627
601.969.9692 tel.
601.914.3580 fax.

-----Original Message-----
From: Vogel Newsome [mailto:[redacted]]
Sent: Wednesday, June 25, 2003 6:03 PM
To: david@bfhslaw.com
Cc: john@bfhslaw.com; bertrell@bfhslaw.com; [redacted]
Subject: PAYCHECK

David,

In that I am presently working and due to the circumstances involving my employment with BFH&S, I would like to have a friend of mine pick up my

EXHIBIT "39"

paycheck on Monday. Also, would like to know whether or not I will be getting my vacation pay as well. If so, please have these checks ready for my friend when she come's by. If there is a problem with this request, kindly advise.

Thanks,

Vogel Newsome
Proverbs 16:18

cc: Personal File

2000E, CLOSED, MAG-1, R&R

U. S. District Court
Eastern District of Louisiana (New Orleans)
CIVIL DOCKET FOR CASE #: 2:99-cv-03109-GTP

Newsome v. Entergy NO Inc, et al
Assigned to: Judge G. Thomas Porteous, Jr
Demand: $0
Case in other court: 00-30521
Cause: 42:2000 Job Discrimination (Race)

Date Filed: 11/03/1999
Date Terminated: 03/20/2002
Jury Demand: Plaintiff
Nature of Suit: 442 Civil Rights: Jobs
Jurisdiction: Federal Question

Plaintiff

Vogel Denise Newsome

represented by **Vogel Denise Newsome**
P. O. Box 31265
Jackson, MS 39286-1265
601-885-9536
PRO SE

Michelle Ebony Scott-Bennett
Justice for All Law Center, LLC
Gretna Plaza Bldg.
1500 Lafayette St.
Suite 122
Gretna, LA 70053
504-368-1711
Email: jfalc@bellsouth.net
TERMINATED: 04/03/2002
LEAD ATTORNEY

V.

Defendant

Entergy New Orleans, Inc.
TERMINATED: 01/18/2000

represented by **Allyson Kessler Howie**
Entergy Services, Inc. (New Orleans)
639 Loyola Avenue
26th Floor
P. O. Box 61000
New Orleans, LA 70113
504-576-5849
Email: ahowie@entergy.com
TERMINATED: 01/18/2000
LEAD ATTORNEY

Renee Williams Masinter
Entergy Services, Inc. (New Orleans)

Exhibit "38"

7/12/2008

639 Loyola Avenue
26th Floor
P. O. Box 61000
New Orleans, LA 70113
504-576-2266
Email: AMASINT@entergy.com
TERMINATED: 01/18/2000

Defendant

Entergy Services Inc

represented by **Allyson Kessler Howie**
(See above for address)
TERMINATED: 06/13/2000
LEAD ATTORNEY

Renee Williams Masinter
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Amelia Williams Koch
Baker Donelson Bearman Caldwell & Berkowitz (New Orleans)
201 St. Charles Ave.
Suite 3600
New Orleans, LA 70170
504-566-5200
Fax: 504-636-4000
Email: akoch@bakerdonelson.com
ATTORNEY TO BE NOTICED

Jennifer F. Kogos
Jones Walker (New Orleans)
Place St. Charles
201 St. Charles Ave.
New Orleans, LA 70170-5100
(504) 582-8000
Email: jkogos@joneswalker.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
11/03/1999	1	COMPLAINT (1 summons(es) issued) (daf) (Entered: 11/04/1999)
11/03/1999	2	ORDER granting pla leave to proceed in forma pauperis by Magistrate Sally Shushan (daf) (Entered: 11/04/1999)
11/03/1999		Automatic Referral (Utility Event) to Magistrate Sally Shushan (daf) (Entered: 11/04/1999)
11/10/1999	3	RETURN OF SERVICE of summons and complaint upon defendant Entergy

		NO Inc on 11/10/99 (cca) (Entered: 11/12/1999)
11/18/1999	4	Motion by defendant Entergy NO Inc and ORDER extending time through 12/20/99 to answer pla's original cmp by Judge Morey L. Sear Date Signed: 11/19/99 (nn) (Entered: 11/23/1999)
12/01/1999	5	Response by plaintiff Vogel Denise Newsome to defendant's ex parte motion for extension of time within which to answer, plead, or otherwise respond [4-1] (tbl) (Entered: 12/02/1999)
12/09/1999	6	MINUTE ENTRY (12/8/99): MEMO & ORDER re: dft's mtn for ext of time to file an answer to pla's cmp by Judge Morey L. Sear Date Signed: 12/8/99 (gw) (Entered: 12/09/1999)
12/20/1999	7	ANSWER by defendant Entergy NO Inc to complaint by plaintiff Vogel Denise Newsome [1-1] (sup) (Entered: 12/23/1999)
12/28/1999	8	MINUTE ENTRY(12/27/99): A Preliminary Telephone Conference is set 2:00 1/11/00 before mag by Magistrate Sally Shushan (nn) (Entered: 12/28/1999)
12/29/1999	9	Motion by plaintiff Vogel Denise Newsome and ORDER granting leave to file a response to dft's ans to their original cmp by Magistrate Sally Shushan Date Signed: 1/3/00 (nn) (Entered: 01/03/2000)
01/03/2000	10	Response by plaintiff Vogel Denise Newsome [7-1] to dft's answer to his cmp (nn) (Entered: 01/03/2000)
01/12/2000	11	MINUTE ENTRY(1/11/00): A telephone status conf was held this date; the parties advised that they do not wish to consent to trial before the mag; pla's deposition is scheduled for 3/15/00 at 9:30am by Magistrate Sally Shushan (nn) (Entered: 01/12/2000)
01/14/2000	12	NOTICE/ORDER that a preliminary conference is scheduled by telephone before courtroom deputy at 3:15 1/25/00 by Clerk (cbn) (Entered: 01/14/2000)
01/18/2000	13	Notice of Deposition by defendant Entergy NO Inc of Vogel Denise Newsome on 3/15/00. (gw) (Entered: 01/18/2000)
01/18/2000	14	NOTICE by plaintiff Vogel Denise Newsome of temporary change of address (nn) (Entered: 01/20/2000)
01/18/2000	15	Motion by plaintiff Vogel Denise Newsome and ORDER amending his original cmp by substituting Entergy Services Inc in lieu of dft Entergy New Orleans Inc Magistrate Sally Shushan Date Signed: 1/20/00 - 1 sms issd. (nn) (Entered: 01/20/2000)
01/26/2000	16	ORDER ; Preliminary Conference held 3:15 1/25/00 ; Pre-Trial Conference set 4:30 7/19/00 ; Settlement conference set 10:20 6/15/00 ; jury trial set 8:30 8/14/00 by Judge Morey L. Sear Date Signed: (cbn) (Entered: 01/26/2000)
02/07/2000	17	RETURN OF SERVICE of summons and complaint upon defendant Entergy Services Inc on 1/26/00 (nn) Modified on 04/28/2000 (Entered: 02/07/2000)
02/08/2000	18	ANSWER by defendant Entergy Services Inc to amended complaint by

		plaintiff Vogel Denise Newsome [1-1] (nn) Modified on 04/28/2000 (Entered: 02/09/2000)
02/09/2000	21	PLAINTIFF'S AMENDED complaint [1-1]; no new parties added (nn) (Entered: 02/29/2000)
02/11/2000	19	MOTION by plaintiff Vogel Denise Newsome for appointment of counsel to be heard before mag (nn) (Entered: 02/16/2000)
02/16/2000	20	MINUTE ENTRY(2/15/00): setting hrg on pla's motion for appointment of counsel [19-1] at 8:30 1/22/00 by telephone by Magistrate Sally Shushan (nn) (Entered: 02/16/2000)
02/28/2000	23	Motion by plaintiff Vogel Denise Newsome and ORDER extending time for pla to respond to disc by 3/13/00; pla's deposition is rescheduled for a mutually convenient date for pla and defense counsel by Magistrate Sally Shushan Date Signed: 2/29/00 (nn) (Entered: 03/01/2000)
02/29/2000	22	MINUTE ENTRY(2/22/00): A conf was held this date; ORDER denying pla's motion for appointment of counsel [19-1] by Magistrate Sally Shushan (nn) (Entered: 02/29/2000)
03/08/2000	24	MOTION by plaintiff Vogel Denise Newsome to appeal order entered denying pla's application for appointment of attorney to be heard before Judge Sear; no hrg date (tbl) (Entered: 03/13/2000)
04/11/2000	25	MINUTE ENTRY(4/10/00): [24-1] Hrg on pla's motion to appeal order entered denying pla's application for appointment of attorney is AFFIRMED by Judge Morey L. Sear Date Signed: 4/10/00 (nn) (Entered: 04/12/2000)
04/17/2000	26	NOTICE by plaintiff Vogel Denise Newsome of change of address (nn) (Entered: 04/17/2000)
04/17/2000	27	Motion by plaintiff Vogel Denise Newsome to stay execution of judgment of order denying his mtn for appointment of counsel and ORDER denying same; there is no provision in federal law for such appointment by Judge Morey L. Sear Date Signed: 4/18/00 (nn) (Entered: 04/19/2000)
04/18/2000	28	Motion by plaintiff Vogel Denise Newsome and ORDER granting his request for information from Mag Shushan by Magistrate Sally Shushan Date Signed: 4/18/00 (nn) (Entered: 04/19/2000)
04/25/2000	29	Notice of appeal by plaintiff Vogel Denise Newsome from Dist. Court decision of 4/10/00 and 4/18/00 [27-1] [25-1] (nn) (Entered: 04/26/2000)
04/25/2000	30	Motion by plaintiff Vogel Denise Newsome and ORDER granting leave to appeal in forma pauperis by Judge Morey L. Sear Date Signed: 4/16/00 (nn) (Entered: 04/27/2000)
05/02/2000	31	MOTION by defendant Entergy Services Inc to compel disc referred to Magistrate Sally Shushan to be heard before mag at 9:00 5/17/00 (nn) (Entered: 05/03/2000)
05/08/2000	32	Memo in opposition by plaintiff Vogel Denise Newsome to motion to compel disc [31-1] filed by defendant Entergy Services Inc. (sek) (Entered:

		05/08/2000)
05/12/2000		Record on Appeal sent to Circuit Court [29-1] (nn) (Entered: 05/15/2000)
05/12/2000		Notification by Circuit Court of Appellate Docket Number [29-1] 00-30521 (nn) (Entered: 05/15/2000)
05/15/2000	33	MOTION by plaintiff Vogel Denise Newsome for summary judgment referred to Magistrate Sally Shushan to be heard before mag at 9:00 5/31/00 (nn) (Entered: 05/15/2000)
05/16/2000	34	MINUTE ENTRY(5/16/00): granting dft Entergy Services' motion to compel disc [31-1] by Magistrate Sally Shushan (nn) (Entered: 05/16/2000)
05/17/2000	35	Notice of Deposition by defendant Entergy Services Inc of Vogel Denise Newsome on 6/1/00 (nn) (Entered: 05/18/2000)
05/19/2000	36	Plaintff's objections to Mag's granted motion to defendant to compel (cbn) (Entered: 05/22/2000)
05/19/2000	37	Witness and exhibit list submitted by defendant Entergy Services Inc (cbn) (Entered: 05/23/2000)
05/22/2000	38	MOTION by plaintiff Vogel Denise Newsome for protective order and staying of taking of depo to be heard before Mag Judge Shushan at 9:00 6/7/00 (pck) (Entered: 05/23/2000)
05/22/2000	39	Response by plaintiff Vogel Denise Newsome the 5/19/00 filing of dft's wit & exh [37-1] list (pck) (Entered: 05/23/2000)
05/23/2000	40	Memo in opposition by defendant Entergy Services Inc to motion for summary judgment [33-1] filed by defendant Entergy Services Inc (cbn) (Entered: 05/24/2000)
05/30/2000	41	Motion by plaintiff Vogel Denise Newsome and ORDER granting leave to file their response to dft's memo in opp to their mtn for summary judgment by Judge Morey L. Sear Date Signed: 6/1/00 (nn) (Entered: 06/02/2000)
06/01/2000	42	Reply by plaintiff Vogel Denise Newsome to dft's response to their motion for summary judgment [33-1] (nn) (Entered: 06/02/2000)
06/07/2000	43	Memo in opposition by defendant Entergy Services Inc to motion for protective order and staying of taking of depo [38-1] filed by plaintiff Vogel Denise Newsome (cbn) (Entered: 06/08/2000)
06/09/2000	44	MINUTE ENTRY (6/8/00): ORDERED that pla's motion for protective order staying the taking of her depo [38-1] is denied; Pla is to submit for her depo w/in 20 days of entry of this order at a time & place agreed to with counsel for Entergy by Magistrate Sally Shushan (gw) (Entered: 06/09/2000)
06/09/2000	45	MINUTE ENTRY(6/9/00): ORDER referring to Magistrate Sally Shushan the motion for summary judgment [33-1] filed by plaintiff Vogel Denise Newsome by Judge Morey L. Sear (nn) (Entered: 06/12/2000)
06/12/2000	46	Objections by plaintiff Vogel Denise Newsome to Mag's order denying pla's

		mtn for protective order & staying of taking of deposition [44-1] (nn) (Entered: 06/12/2000)
06/12/2000	47	MINUTE ENTRY(6/12/00): Status conference set 10:20 6/15/00 is continued to be reset pending resolution of pla's mtn for summary judgment by Judge Morey L. Sear (nn) (Entered: 06/13/2000)
06/13/2000	48	Motion by defendant Entergy Services Inc and ORDER withdrawing attorney Allyson Kessler Howie and substituting attorneys Amelia Williams Koch, Jennifer A. Faroldi for same by Judge Morey L. Sear Date Signed: 6/14/00 (nn) (Entered: 06/15/2000)
06/19/2000	49	Report and Recommendation: It is recommended that pla's mtn for summary judgment be denied by Magistrate Sally Shushan Date of Mailing: 6/20/00 (nn) (Entered: 06/20/2000)
06/19/2000	50	Motion by defendant Entergy Services Inc to extend pre-trial mtn & disc deadlines and ORDER denying same as ex-parte by Judge Morey L. Sear Date Signed: 6/20/00 (nn) (Entered: 06/21/2000)
06/21/2000	51	Notice of Deposition by defendant Entergy Services Inc of Vogel Denise Newsome on 6/28/00 (nn) (Entered: 06/21/2000)
06/21/2000	52	Motion by defendant Entergy Services Inc and ORDER granting their mtn to supplement their mtn to ext pre-trial mtn & disc deadlines, extending the deadlines to 7/31/00 by Judge Morey L. Sear Date Signed: 6/22/00 (nn) (Entered: 06/23/2000)
06/23/2000	53	MOTION by plaintiff Vogel Denise Newsome for Objection to Findings/Report and Recommendation to be heard before Judge Sear at 9:15 7/19/00 (ck) (Entered: 06/26/2000)
06/26/2000	54	MOTION by plaintiff Vogel Denise Newsome to stay execution of judgment pending appeal to be heard before judge at 9:15 7/19/00 (nn) Modified on 07/20/2000 (Entered: 06/27/2000)
06/26/2000	55	MOTION by plaintiff Vogel Denise Newsome to disqualify Mag Shushan where she is bias or prejudice toward a party to be heard before judge at 9:15 7/19/00 (nn) (Entered: 06/27/2000)
07/03/2000	56	MOTION by defendant Entergy Services Inc for summary judgment to be heard before judge at 9:15 7/19/00 (jd) (Entered: 07/03/2000)
07/05/2000	57	Memo in opposition by plaintiff Vogel Denise Newsome to motion for summary judgment [56-1] filed by defendant Entergy Services Inc (plr) (Entered: 07/05/2000)
07/05/2000	58	Memo in opposition by defendant Entergy Services Inc to Objections to Findings/Report and Recommendation [53-1] filed by plaintiff Vogel Denise Newsome (nn) (Entered: 07/06/2000)
07/05/2000	59	Motion by defendant Entergy Services Inc and ORDER to cont the Pre-Trial Conference scheduled for 7/19/00 is granted by Judge A. J. McNamara Date Signed: 7/10/00 (gw) (Entered: 07/11/2000)

07/11/2000	60	Memo in opposition by defendant Entergy Services Inc to motion to stay execution of judgment pending apeal [54-1] filed by plaintiff Vogel Denise Newsome (cbn) (Entered: 07/12/2000)
07/11/2000	61	Memo in opposition by defendant Entergy Services Inc to motion to disqualify Mag Shushan where she is bias or prejudice toward a party [55-1] filed by plaintiff Vogel Denise Newsome (cbn) (Entered: 07/12/2000)
07/12/2000	62	Motion by pla Vogel Denise Newsome & ORDER for leave to file resp to dft's opp to pla's petn to stay execution of jgm pending appeal by Judge Morey L. Sear (ijg) (Entered: 07/18/2000)
07/18/2000	63	Resp by pla Vogel Denise Newsome to dft's opp to pla's motion to stay execution of judgment pending appeal [54-1] (ijg) (Entered: 07/18/2000)
07/19/2000	64	MINUTE ENTRY (7/17/00): ORDERED that pla's motion to stay execution of judgment pending appeal of the denial of appointment of counsel [54-1] is granted by Judge Morey L. Sear Date Signed: 7/18/00 (gw) (Entered: 07/20/2000)
08/03/2000		Record on appeal returned from U.S. Court of Appeals [0-0] (nn) (Entered: 08/04/2000)
08/04/2000	65	Judgment from Court of Appeals remanding the matter back to District Court [29-1]; the district court's order denying appointment of trial counsel is Vacated; pla's mtn for appointment of appellate counsel is denied (JOLLY, DAVIS & BENAVIDES) Issued as mandate on 8/3/00 (nn) Modified on 08/04/2000 (Entered: 08/04/2000)
08/29/2000	66	MINUTE ENTRY (8/29/00) Hearing set 9/14/00 at 2:00 pm to determine whether pla Vogel Denise Newsome should be granted an atty to represent her in this litigation by Judge Morey L. Sear (gw) (Entered: 08/30/2000)
09/06/2000	67	Memo in opposition by defendant Entergy Services Inc to appointment of counsel for plaintiff (cbn) (Entered: 09/08/2000)
09/14/2000	68	SMOOTH MINUTES: Reported/Recorded by Vicky Hollard; Hrg to determine whether pla should be granted an attorney to represent her in this litigation was submitted this date by Judge Morey L. Sear (nn) (Entered: 09/15/2000)
09/26/2000	69	MINUTE ENTRY (9/25/00) MEMO & ORDER: ORDERED that pla's application for appointment of trial counsel is denied by Judge Morey L. Sear (gw) Modified on 09/27/2000 (Entered: 09/27/2000)
09/29/2000	72	Petition by plaintiff Vogel Denise Newsome to stay execution of judgment of order denying pla's mtn for appointment of counsel (nn) (Entered: 10/24/2000)
10/11/2000	70	MINUTE ENTRY (10/10/00) ORDERED that the hearing of 9/14/00 be transcribed & certified as true & correct & returned to the judge by 10/25/00 by Judge Morey L. Sear Date Signed: 10/10/00 (nn) (Entered: 10/11/2000)
10/18/2000	71	Transcript of hearing to determine whether pla should be granted an atty to represent her held 9/14/00 before Judge Sear (nn) (Entered: 10/19/2000)

10/24/2000	73	MINUTE ENTRY (10/24/00) denying pla's mtn for reconsideration of the m.e. of 9/26/00 [72-1] by Judge Morey L. Sear (nn) (Entered: 10/24/2000)
10/25/2000	74	NOTICE case reallotted effective November 1, 2000, to Judge G. T. Porteous Jr. by Clerk (nn) (Entered: 10/26/2000)
10/30/2000	75	Notice of appeal by plaintiff Vogel Denise Newsome from Dist. Court [73-1] minute entry entered 10/24/00, [69-1] minute entry entered on 9/26/00 (rg) (Entered: 10/31/2000)
10/31/2000	76	MOTION by plaintiff Vogel Denise Newsome for leave to appeal in forma pauperis & UNSIGNED ORDER. (gw) (Entered: 11/03/2000)
11/03/2000	77	ORDERED that in accordance with Rule 7201E, referring to Magistrate Sally Shushan the motion for leave to appeal in forma pauperis [76-1] filed by plaintiff Vogel Denise Newsome by Judge G. T. Porteous Jr. Date Signed: 11/1/00 (gw) Modified on 11/28/2000 (Entered: 11/03/2000)
11/09/2000	78	MINUTE ENTRY (11/9/00) Re pla's mtn to proceed in forma pauperis on appeal, pla to provide addl info provided in Form 4 of the Fed Rules of Appellate Procedure w/in 10 days of the date of this order; by Magistrate Sally Shushan (rg) (Entered: 11/13/2000)
11/20/2000	79	Response by defendant Entergy NO Inc to [78-1] the Court's 11/9/00 minute entry (rg) (Entered: 11/21/2000)
11/28/2000	80	MINUTE ENTRY (11/28/00) Pla's motion to disqualify Mag Shushan where she is bias or prejudice toward a party is DENIED [55-1]. Pla's mtn to appeal in forma pauperis is GRANTED; by Magistrate Sally Shushan (rg) (Entered: 11/29/2000)
12/06/2000		Record on Appeal sent to Circuit Court [75-1] USCA Number: 00-31299 (rg) (Entered: 12/11/2000)
12/07/2000	81	NOTICE/ORDER that a preliminary conference is scheduled by telephone before courtroom deputy at 3:00 12/14/00 by Clerk (rew) (Entered: 12/07/2000)
12/18/2000	82	ORDER: ORDERED that the Clerk close case for statistical purposes; by Judge G. T. Porteous Jr. Date Signed: 12/14/00 (CASE CLOSED) (rg) (Entered: 12/19/2000)
12/19/2000	83	NOTICE by plaintiff Vogel Denise Newsome of change of address (rg) (Entered: 12/19/2000)
01/30/2001	84	ORDER from Court of Appeals: Pla's mtn for appointment of counsel for appeal is DENIED; (Clerk USCA) (rg) (Entered: 01/31/2001)
05/29/2001	85	Judgment from Court of Appeals affirming the decision of the District Court [75-1]; (HIGGINBOTHAM, WIENER, BARKSDALE) Issued as mandate on 5/29/01 (dw) (Entered: 06/01/2001)
05/29/2001		Record on appeal returned from U.S. Court of Appeals [0-0] (dw) (Entered: 06/01/2001)

10/15/2001		LETTER from U.S. Supreme Court regarding denial of Writ of Certiorari as to plaintiff Vogel Denise Newsome (rg) (Entered: 10/22/2001)
10/24/2001	86	Motion by defendant Entergy Services Inc and ORDER to reopen case; by Judge G. T. Porteous Jr. Date Signed: 10/25/01 (rg) (Entered: 10/26/2001)
10/30/2001	87	Renotice of Hearing by defendant Entergy Services Inc setting its motion for summary judgment [56-1] at 10:00 11/21/01 (rg) (Entered: 10/31/2001)
11/13/2001	88	Motion by plaintiff Vogel Denise Newsome and ORDER re- setting dft's motion for summary judgment [56-1] to 12/19/01 by Judge G. T. Porteous Jr. Date Signed: 11/14/01 (ck) (Entered: 11/19/2001)
11/13/2001	89	Motion by plaintiff Vogel Denise Newsome and ORDER that the name of attorney Michelle Ebony Scott-Bennett be entered as counsel of record for same by Judge G. T. Porteous Jr. Date Signed: 11/14/01 (dw) (Entered: 11/19/2001)
12/10/2001	90	Memo in opposition by plaintiff Vogel Denise Newsome to motion for summary judgment [56-1] filed by defendant Entergy Services Inc (rg) (Entered: 12/11/2001)
03/20/2002	91	ORDER & REASONS: ORDERED that dft Entergy's motion for summary judgment is GRANTED pursuant to Rule 56 of the FRCP; [56-1] by Judge G. T. Porteous Jr. Date Signed: 3/18/02 (rg) (Entered: 03/20/2002)
03/20/2002	92	JUDGMENT: ORDERED that there be jgm in favor of dft Entergy New Orleans, Inc. and agst the pla Vogel Newsome, dismissing pla's claims w/prej; by Judge G. T. Porteous Jr. Date signed: 3/18/02 (CASE CLOSED) (rg) (Entered: 03/20/2002)
04/01/2002	93	MOTION by plaintiff Vogel Denise Newsome to stay proceedings to enforce a jgm; mtn to amd jgm & mtn to set aside jgm to be heard before Judge Porteous at 10:00 4/24/02 (rg) Modified on 04/16/2002 (Entered: 04/03/2002)
04/03/2002	94	Motion by plaintiff Vogel Denise Newsome and ORDER withdrawing attorney Michelle Ebony Scott-Bennett for Vogel Denise Newsome; by Judge G. T. Porteous Jr. Date Signed: 4/8/02 (rg) (Entered: 04/09/2002)
04/10/2002	95	Memorandum by plaintiff Vogel Denise Newsome in opposition to [94-1] the motion & order granting the withdrawal of attorney Michelle Ebony Scott-Bennett for Vogel Denise Newsome (rg) (Entered: 04/11/2002)
04/16/2002	96	Memo in opposition by defendant Entergy Services Inc to motion to stay proceedings to enforce a jgm; mtn to amd jgm & mtn to set aside jgm [93-1] filed by plaintiff Vogel Denise Newsome & response to pla's response to mtn to w/draw filed by atty Michelle Scott-Bennett (rg) Modified on 04/17/2002 (Entered: 04/17/2002)
05/06/2002	97	ORDER & REASONS: ORDERED that pla's motion to stay proceedings to enforce a jgm; mtn to amd jgm & mtn to set aside jgm is DENIED; [93-1]; by Judge G. T. Porteous Jr. (rg) (Entered: 05/06/2002)
05/13/2002	98	MOTION by plaintiff Vogel Denise Newsome for reconsideration of the

		Court's denial of pla's mtn to stay proceedings to enforce a jgm, mtn to amd jgm; and mtn to set aside jgm to be heard before Judge Porteous at 10:00 6/5/02 (rg) (Entered: 05/17/2002)
05/20/2002	99	Memo in opposition by defendant Entergy Services Inc to motion for reconsideration of the Court's denial of pla's mtn to stay proceedings to enforce a jgm, mtn to amd jgm; and mtn to set aside jgm [98-1] filed by plaintiff Vogel Denise Newsome (rg) (Entered: 05/20/2002)
06/11/2002	100	ORDER & REASONS: ORDERED that pla's motion for reconsideration of the Court's denial of pla's mtn to stay proceedings to enforce a jgm, mtn to amd jgm; and mtn to set aside jgm is DENIED. [98-1] Pla Vogel Newsome is to file no further pleadings in this Court, as set forth in this order. Pla instructed to seek further relief w/the USCA; by Judge G. T. Porteous Jr. (rg) (Entered: 06/11/2002)
07/10/2002	101	Notice of appeal by plaintiff Vogel Denise Newsome from Dist. Court [100-1] order entered on 6/11/02, [97-1] order entered on 5/6/02, [92-2] judgment entered on 3/20/02 (rg) (Entered: 07/11/2002)
07/10/2002	103	MOTION by plaintiff Vogel Denise Newsome for leave to appeal in forma pauperis ; no ntc of hrg. (rg) (Entered: 07/24/2002)
07/18/2002	102	AMENDED JUDGMENT: The Court's jgm signed 3/18/02, doc #92, is amended: ORDERED that there be jgm in favor of dft Entergy Services, Inc., and agst pla Vogel Newsome, dismissing pla's claims w/prej; in all other respects the jgm signed 3/18/02 remains unchanged; by Judge G. T. Porteous Jr. Date signed: 7/17/02 (rg) (Entered: 07/18/2002)
07/23/2002	104	Motion by plaintiff Vogel Denise Newsome and ORDER for leave to appeal in forma pauperis; by Judge G. T. Porteous Jr. (rg) (Entered: 07/24/2002)
07/24/2002		Record on Appeal sent to Circuit Court [101-1] USCA Number: 02-30705 (rg) (Entered: 07/25/2002)
01/17/2003		Record on appeal returned from U.S. Court of Appeals [0-0] (rg) (Entered: 01/21/2003)
01/17/2003	105	ORDER from Court of Appeals: the mtn of appellee to dism the appeal for lack of juris is granted; the mtn of appellant to strike or deny appellee's mtn to dism the appeal for lack of juris is denied; the mtns of appellant for sanctions agst appellee are denied; [101-1] (BARKSDALE, DEMOSS, BENAVIDES) (rg) (Entered: 01/21/2003)
10/21/2003		LETTER from U.S. Supreme Court denying Writ of Certiorari as to plaintiff Vogel Denise Newsome (lg) (Entered: 10/23/2003)

A record of Judicial Success

Judge
William L. (Bill)
Skinner
County Court

Voting Precincts

William Louis "Bill" Skinner, II, a Mississippi native, was born into a family of Mississippi Law Enforcement, and has continued that legacy to this day.

Bill, the oldest son of Minette Skinner and the late Louis Skinner, was born February 9, 1959, at the Holmes County Community Hospital in Lexington, Mississippi. After the birth of Bill's younger brother, Michael, in September of 1961, the Skinner's moved to Jackson, Mississippi where Bill's father was a member of the Jackson Police Department. Louis Skinner joined the Jackson Police Department as a raw recruit in October of 1960. In September of 1962, Bill's youngest brother, Chris, was born, and

for the next nine years, the Skinner household was very busy. The Skinner boys, as they were known in the neighborhood, enjoyed the all American childhood with parents that made sure they were involved in church activities as well as sports. By 1971, Bill's father, Louis, had progressed to the rank of Detective Lieutenant with the Jackson Police Department, and began to head a new FBI Intelligence Unit in Jackson. On August 18, 1971, seventeen Jackson Police Officers joined seventeen FBI agents in a joint effort to apprehend a Republic of New Africa (RNA) fugitive wanted by the Detroit Police on a murder warrant. As a result of the confrontation, a gun battle erupted lasting about twenty minutes. In those twenty minutes, Bill's father was shot in the head by one of the RNA members and never regained consciousness. Twenty-one hours later on August 19, 1971, Louis died. After Louis' death, the police-training academy in Jackson was named "William Louis Skinner Police Training Academy" in his honor.

After Bill's father's death, his mother, Minette, furthered her education while raising 3 young boys (Bill was twelve, Mike was eleven, and Chris was eight). She enrolled in Hinds Junior College, Raymond, and graduated as a special honor student. She then

Exhibit "37"

entered Mississippi College, Clinton, and graduated with distinction having earned her Bachelor of Science degree in education. In the fall of 1981 she became a full-time teacher at Robert E. Lee Elementary School in Jackson and spent the next eighteen years there. In August of 1998, she retired, and afterwards was inducted into Alpha Delta Kappa national teacher honorary. Minette now divides her time between her grandchildren and spends some time in Lexington with her sisters. Bill's younger brothers Mike and Chris, are career law enforcement officers. Mike is a Lieutenant for the Hinds County Sheriff's office. He is married to Nicole Berryhill Skinner and they have one son, Michael Louis Skinner. Bill's youngest brother, Chris, worked for 19 years as a Lieutenant for the Hinds County Sheriff's office, but is presently employed as a Captain of Security at the University of Mississippi Medical Center. He is married to Judy Newton Skinner and they have two sons, Christopher Wesley Skinner and Brett Lawrence Skinner.

Bill attended Marshall Elementary School, Peeples Junior High, and Wingfield High School, all in Jackson. In 1980, Bill, following in his father's footsteps, graduated from the William Louis Skinner Jackson Police Department Training Academy as a Certified Law Enforcement Officer. He patrolled Precinct One for three years and Precinct Three for seven years. Bill became a Jackson Police Department Training Instructor for four years and a member of the Pistol Team for two years. In 1982, Skinner joined the Jackson Police Department's Special Weapons and Tactics (SWAT) team and was their primary door entry person for thirteen years with nine years as a trainer. Bill has trained SWAT teams all over Mississippi. As a Jackson Police Officer, Bill received two Distinguished Service Stars and a nominee for the Billy Hickman award and was nominated numerous times for Officer of the Month and Officer of the Year. He served on the Board of Directors of the State SWAT Association and was second Vice-President of the Jackson Police Officers Association.

While employed for Jackson Police Department, Bill attended Hinds Community College and in 1990, Bill received his Associate of Science Degree. He then enrolled in Mississippi College in Clinton, Mississippi (MC), to pursue his Bachelor's Degree. After receiving his Bachelor of Science Degree, Bill entered MC's Graduate School to receive his Masters Degree. On August 31, 1992, as a Jackson Police Officer, Bill was injured in the line of

duty. Due to the extensiveness of the injuries, Bill was no longer physically able to be a police officer and was forced to take a medical retirement from the Jackson Police Department in May of 1994. To date Bill has undergone eleven shoulder surgery's, as a result of his in the line of duty injury. In 1998, Bill graduated from Mississippi College School of Law. In January of 2000, Bill opened his own law practice, Skinner & Associates, LLC, in Raymond, Mississippi. Bill's primary practice was Family Law and Involuntary Drug and Alcohol Committals. Bill is a member of the Mississippi Bar Association and the Hinds County Bar.

He is a certified mediator through Southern Arbitration and Mediation. On November 22, 2000, Bill was elected Hinds County Justice Court Judge for District Four, receiving almost 72% of the vote in a special election. As a Justice Court Judge, Bill was the first judge in Hinds County Justice Court to use alternative sentencing for convicted criminals, which required defendants to attend and successfully complete such classes as, drug and alcohol counseling, anger management, domestic violence counseling and perform community service. Bill was also instrumental in developing a Bond Probation program, which allowed defendants to be released on bond and have them report to a probation officer. This reduces the likelihood that they will commit another offense while they are awaiting trial. He assisted in the draft handbook for the Crime Victim Compensation Program for the State of Mississippi and also assisted the Mississippi's Coalition Against Domestic Violence in drafting legislation to amend a law that would revise the domestic violence provisions of the warrantless arrest statute. Bill is currently enrolled at Jackson State University, where he has completed the classroom requirements for the Public Policy and Administration Ph. D. Program, and is preparing to work on his dissertation. Bill enjoys spending time with his family. In 1992 he was introduced to Angel Terry at Hillcrest Baptist Church.

On August 15, 1995, at Sugarland Wedding Chapel in Gatlinburg, Tennessee, Bill and Angel were married. He is married to Angela "Angel" Darlene Terry Skinner. She is the daughter of Charles and Betty Terry of Clinton, Mississippi. Angel was born at Hinds

General Hospital in Jackson, Mississippi. She has two older brothers: Mitch Terry and Glenn Terry. Angel attended Baker Elementary School, Peeples Junior High, and Wingfield High School. She graduated from Hinds Community College with an Associate of Arts Degree. In 1992, she and Bill attended Mississippi College where Angel received her Bachelors and Masters Degree in

Communications with an emphasis on Public Relations. During her graduate studies, Angel was employed at the Clinic for Women of Central Mississippi, in Jackson. She continued her employment after graduation and worked as their billing and insurance specialist until 1999. Angel has remained in the medical field but since moved to Medical Practice Solutions, a billing and management company, to become the Business Office Manager and consultant for MAE Physicians Surgery Center, LLC, an ambulatory surgery center in Jackson.

Today Bill and Angel have three children: Tiffany Rene' Skinner (22), William "Trey" Louis Skinner, III (9), and Angela Nicole "Nikki" Skinner (3). Tiffany is a graduate of Belhaven College with a degree in Business; Trey is a fourth grader at Gary Road Intermediate School in Byram, Mississippi; and Nikki enjoys playing with her friends and learning at a local preschool. Bill and his family live in Raymond, Mississippi, and actively attend Wynndale Baptist Church in Terry, Mississippi. During Bill's leisure time he enjoys walking, martial arts, in which he and his son, Trey, hold First Degree Black Belts in Tae Kwon Do, riding his Harley Davidson Motorcycle, riding dirt bikes with his son, traveling each summer with his family, and working and spending time with his family on their 40 acre farm in Lexington, Mississippi. .

Committee to Elect William L. "Bill" Skinner Hinds County Court Louie Brooks, CPA, Treasurer (601-373-0073) P.O. Box 1208 Rayjmond,, Mississippi 39154 601-372-5722 skin2221@bellsouth.net

VOGEL D. NEWSOME

Post Office Box 31265
Jackson, Mississippi 39286
Phone: 601/885-9536

August 5, 2006

VIA PRIORITY MAIL **– Signature Confirmation Requested**

Federal Bureau of Investigation
100 West Capitol Street, Room 1553
Jackson, Mississippi 39269-1601

RE: **REQUEST FOR STATUS OF INVESTIGATION/COMPLAINT FILED**
Vogel D. Newsome's Complaint Filed with FBI on June 26, 2006

Dear Sir(s)/Madam(s):

I am contacting you to request a written response ***no later*** than **August 15, 2006**, as to the status of the Complaint I filed with the Federal Bureau of Investigation ("FBI") on June 26, 2006, in the Jackson, Mississippi office.

On June 26, 2006, I spoke with a representative of the FBI who did not want to provide his name; advising that he was just taking the Complaint, however, would not be the contact person. I provided him with my typewritten complaint wherein the FBI representative advised me that the information would be entered and it would be about two (2) weeks before I may hear something; then, at that time, I will be provided with the name of a contact person.

It has been over a month since my filing of a formal complaint with the FBI Jackson, Mississippi office. Attached for your review is a copy of the Complaint filed on June 26, 2006. Again, I am requesting that your office provide me with a **written** *status update* as to where my Complaint is with your agency.

My concerns, as conveyed in the Complaint, was whether or not the FBI would be willing to investigate the allegations of my Complaint and remain impartial in their handling thereof, due to the fact that Judge Skinner (Justice Court Judge) – whose father was killed in the line of duty during an FBI raid in 1971 on the Republic of New Afrika – the/his Constable (Jon Lewis) and others, associated with Judge Skinner, may have engaged in criminal wrongs against me which violated my civil rights and other protected rights.

Upon my recent visit to the FBI's website, I found where the FBI handles Complaints such as mine, which I believe falls under CIVIL RIGHTS – COLOR OF LAW: (1) Excessive force, (2) False Arrest and Fabrication of Evidence, and (3) Failure to Keep from Harm.

I am providing the FBI Headquarters in Washington, DC with a copy of this letter, via Priority Mail, at the following address – so that they are aware of what is going on (or has taken place) as well:

Federal Bureau of Investigation
J. Edgar Hoover Building
935 Pennsylvania Avenue, NW
Washington, D.C. 20535-0001

As well as other organizations in which I believe may have an interest regarding civil rights violations.

Should you have any questions or comments, please do not hesitate to contact me. I look forward to receiving a ***written*** STATUS REPORT from the FBI by August 15, 2006.

Sincerely,

Vogel Newsome

cc: Wanda Abioto
Selected Civil Rights Organization(s)

EXHIBIT "36"

U.S. Code collection

§ 3631. Violations; penalties

Whoever, whether or not acting under color of law, by force or threat of force willfully injuries, intimidates or interferes with, or attempts to injure, intimidate or interfere with—

(a) any person because of his race, color, religion, sex, handicap (as such term is defined in section 3602 of this title), familial status (as such term is defined in section 3602 of this title), or national origin and because he is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwelling, or applying for or participating in any service, organization, or facility relating to the business of selling or renting dwellings; or

(b) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—

(1) participating, without discrimination on account of race, color, religion, sex, handicap (as such term is defined in section 3602 of this title), familial status (as such term is defined in section 3602 of this title), or national origin, in any of the activities, services, organizations or facilities described in subsection (a) of this section; or

(2) affording another person or class of persons opportunity or protection so to participate; or

(c) any citizen because he is or has been, or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, handicap (as such term is defined in section 3602 of this title), familial status (as such term is defined in section 3602 of this title), or national origin, in any of the activities, services, organizations or facilities described in subsection (a) of this section, or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate—

shall be fined under title 18 or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire shall be fined under title 18 or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under title 18 or imprisoned for any term of years or for life, or both.

EXHIBIT "35"

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT – JACKSON DIVISION

VOGEL NEWSOME — PLAINTIFF

V. — CIVIL ACTION NO. 3:07-CV-00099

MELODY CREWS, SPRING LAKE APARTMENTS LLC, DIAL EQUITIES, INC., JON C. LEWIS, individually and in his capacity as Constable of Hinds County, WILLIAM L. SKINNER II, individually and in his capacity as Justice Court Judge, MALCOM McMILLAN, individually and in his capacity as Sheriff of Hinds County, JOHN DOES 1-26, individually and in their official capacities, JANE DOES 1-26, individually and in their Official capacity, COUNTY OF HINDS, MISSISSIPPI — DEFENDANTS

COMPLAINT[1]
JURY TRIAL DEMANDED

Plaintiff, Vogel Newsome ("Plaintiff"), in support of this Complaint against the Defendants: Melody Crews, Spring Lake Apartments, LLC, Dial Equities, Inc., Jon C. Lewis, William L. Skinner II, Hinds County of Mississippi, John Does 1-26, and Jane Does 1-26 (herein individually, collectively, and/or partially "Defendant(s)" and/or as referenced in Complaint) would state the following *claims*:[2]

PARTIES

1. At all times relevant to this Complaint, Plaintiff Vogel Newsome ("Plaintiff"), was a Mississippi resident and had a residence located at 1434 Hawthorne Cove, Jackson, Mississippi 39272.

---

[1] NOTE: Excerpts of case laws to support claims are also attached hereto as Exhibits. Boldface, italics and underline in Exhibits and Complaint represents "emphasis" added. Use of Federal Procedural Forms (Lawyers Edition), and other resource materials as guide in preparation of Complaint).

[2] Information redacted on Exhibits where applicable.

Exhibit "34"

2. At all times relevant to this Complaint, Defendant Spring Lake Apartments, LLC ("Spring Lake Apartments"), is a Mississippi corporation doing business at 1000 Spring Lake Boulevard in Jackson, Mississippi. At all times relevant to this action, its registered agent being, Steve H. Bryan, 779 Avery Boulevard North, Ridgeland, Mississippi 39157. See **Exhibit "1"** attached hereto and incorporated herein by reference.

However, since notification from Plaintiff of filing of litigation, as of August 31, 2006, said Defendant filed with the Office of the Mississippi Secretary of State a "Certificate of Dissolution" and "Certificate of Cancellation." See **Exhibits "2"** and **"3"** respectively and attached hereto and incorporated by reference. When the Plaintiff obtains the appropriate information through disclosure requests, this Complaint will be amended accordingly.

3. At all times relevant to this Complaint, Defendant Dial Equities, Inc., is a Multifamily Property Management Company located at 8313 Spring Plaza in Omaha, Nebraska, and manages apartment communities throughout the central United States, and is doing business through its management community Spring Lake Apartments, LLC in Jackson, Mississippi and which may be served with process in this proceeding by serving its registered agent, Carl J. Troia, Jr., 8313 Spring Plaza, Omaha, Nebraska 68124.

4. At all times relevant to this Complaint, Defendant Melody Crews ("Crews), is a Mississippi resident and was the manager of Spring Lake Apartments, works at Spring Lake Apartments, and may be served at her place of employment located at Spring Lake Apartments, 1000 Spring Lake Boulevard, Jackson, Mississippi 39272.

5. At all times relevant to this Complaint, Defendant Jon C. Lewis ("Lewis") was Constable of Hinds County, Mississippi and may be served at his place of employment located at the Hinds County Court House, 407 Pasacagoula Street, Jackson, Mississippi 39205, and is

hereby being sued in his individual and official capacity. By engaging in the conduct described in this Complaint, Lewis acted under color of law and in the course and scope of his employment for Defendant County of Hinds, Mississippi ("County"). By engaging in the conduct described in this Complaint, Lewis exceeded the authority vested in him as Constable under the United States Constitution and as employee of the County.

6. At all times relevant to this Complaint, Defendant William L. Skinner II ("Skinner"), was Justice Court Judge at the Justice Court of Hinds County, Mississippi located at Hinds County Court House, 407 Pasacagoula Street, Jackson, Mississippi 39205; and is hereby being sued in his individual and official capacity. By engaging in the conduct described in this Complaint, Skinner exceeded the authority vested in him as Justice Court Judge under the United States Constitution and as employee of the County.

7. At all times relevant to this Complaint, Defendant Malcolm McMillan ("McMillin"), was Sheriff of Hinds County, Mississippi and may be served at his place of employment, Raymond Courthouse Annex, 127 West Main Street, Raymond, Mississippi 39154; and is hereby being sued in his individual and official capacity. By engaging in the conduct described in this Complaint, McMillin exceeded the authority vested in him as Sheriff under the United States Constitution and as employee of the County. By engaging in the conduct described in this Complaint, McMillin exceeded the authority vested in him as Sheriff under the United States Constitution and as employee of the County.

8. At all times relevant to this Complaint, Defendants John Does 1 through 5 ("John Does 1-5") were employees of Spring Lake/Dial Equities. Plaintiff is ignorant of the true name and capacity of Defendants John Does 1-5, inclusive, and therefore sue these Defendant by such fictitious names. Plaintiff is informed and believes and thereon alleges that these Defendants are

responsible in some manner for the injuries and damages suffered by Plaintiff as set forth. Plaintiff will amend this Complaint to state the true names and capacities of Defendants John Does 1-5, inclusive, when they have been identified.

9. At all times relevant to this Complaint, Defendant John Doe 6 ("John Doe 6") was the person who aided Lewis, and is hereby being sued in his individual and official capacity. Plaintiff is ignorant of the true name and capacity of Defendant John Doe 5, inclusive, and therefore sue this Defendant by such fictitious name. Plaintiff is informed and believes and thereon alleges that this Defendant is responsible in some manner for the injuries and damages suffered by Plaintiff as set forth. Plaintiff will amend this Complaint to state the true name and capacity of Defendant John Doe 5, inclusive, when he has been identified. By engaging in the conduct described in this Complaint, this exceeded the authority vested in him in his official capacity under the United States Constitution and as employee of the County.

10. At all times relevant to this Complaint, Defendants John Does 6 through 26 ("John Does 6-26" and/or "County Defendants"). Plaintiff is ignorant of the true names and capacities of Defendants John Does 6-26, inclusive, and therefore sue these Defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that each Defendant so named is responsible in some manner for the injuries and damages suffered by Plaintiff as set forth. Plaintiff will amend her Complaint to state the true names and capacities of Defendants John Does 2-26, inclusive, when they have been identified and/or ascertained. By engaging in the conduct described in this Complaint, the Defendants exceeded the authority vested in them in their official capacity under the United States Constitution and as employees of the County.

11. At all times relevant to this Complaint, Defendants Jane Does 1 through 26 ("Jane Doe 1-26" and/or "County Defendants"). Plaintiff is ignorant of the true names and capacities of

Defendants Jan Does 6-26, inclusive, and therefore sue these Defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that each Defendant so named is responsible in some manner for the injuries and damages suffered by Plaintiff as set forth. Plaintiff will amend her Complaint to state the true names and capacities of Defendants Jane Does 2-26, inclusive, when they have been identified and/or ascertained. By engaging in the conduct described in this Complaint, the Defendants exceeded the authority vested in them in their official capacity under the United States Constitution and as employee of the County. By engaging in the conduct described in this Complaint, the Defendants exceeded the authority vested in them in their official capacity under the United States Constitution and as employees of the County.

12. Defendant County of Hinds, Mississippi ("County") is a municipal corporation duly organized and existing under the laws of the State of Mississippi.

JURISDICTION

13. This is an action seeking "equal rights under the law" pursuant to Title 42 USCA §1981 of the Civil Rights Act. This Court has jurisdiction pursuant to 28 USCA § 1343.

14. This Court has jurisdiction pursuant to 28 USCA § 1331.

15. This is an action against Defendants for deprivation of rights, privileges, or immunities secured by the Constitution and laws and liability for injuries Plaintiff has sustained for such deprivation pursuant to Title 42 USCA § 1983.

16. This action arises under the United States Constitution, under the provisions of the Fourth, Sixth, and Fourteenth Amendments to the Constitution of the United States (Art. IV, U.S. Constitution; Art. VI, U.S. Constitution; Art. XIV, U.S. Constitution), and under federal law,

particularly the Civil Rights Act, Titles 42 of the United States Code § 1983 (42 U.S.C.A § 1983), 42 of the United States Code § 1985 (42 U.S.C.A. § 1985), 42 of the United States Code § 1986 (42 U.S.C.A. § 1986).

This Court has jurisdiction of this cause under Titles 28 of the United States Code, § 1343 (28 U.S.C.A. § 1343)

17. . . . Under applicable federal statutes, federal district courts have original jurisdiction over civil actions properly commenced to seek redress for a conspiracy to interfere with the civil rights of another, for negligence in preventing interference with the civil rights of another, for the deprivation, under color of state law, custom, or usage, of those civil rights guaranteed by federal statutory or constitutional provisions to all persons within the jurisdiction of the United States, and for the violation of any federal statute providing for the protection of civil rights. (Am. Jur. Pleading & Practice Forms – Civil Rights § 4)

18. In order to maintain an action under 42 USCA § 1985, Plaintiff need not first exhaust administrative or state remedies. Neither does the availability of a state remedy preclude the Plaintiff from seeking relief under the Civil Rights Act, when the Complaint otherwise states a claim.

19. Pursuant to Miss. Code Ann. §11-25-119: A judgment rendered in a suit of unlawful entry or detainer, either of the plaintiff or defendant, ***shall not*** bar action . . . between the same parties, respecting the same land; ***nor*** shall any judgment given therein be held conclusive of the facts found in any other action between the same parties.

20. This action arises under the Constitution of the United States, particularly the Fourth, Sixth and Fourteenth Amendments to the Constitution of the United States, and under the laws of the United States, particularly the Civil Rights Act, 4, U.S.C.A. §§ 1983 and 1988.

21. The jurisdiction of this court is invoked under the provisions of 28 U.S.C.A. §§ 1331 and 1343.

VENUE

22. Venue is placed in this district court because, at all times relevant to this Complaint, the acts occurred in Hinds County, Mississippi, where the majority of the parties resided and/or where the events complained of occurred.

23. Venue is proper pursuant to 28 USCA § 1391.

STATEMENTS OF MATERIAL FACTS

Plaintiff in support of this Complaint against the Defendants would state the following ***claims:***[3]

24. The Plaintiff herein states that commencing from mid August of 2005, that she made application for admission into the apartment complex of Spring Lake Apartments. That despite her qualifications for said lease that she was unduly required to present evidence of support of credit worthiness based upon the assertion that her credit report showed a negative entry by Trustmark Bank. The Plaintiff contends that the assertion of a negative credit entry from Trustmark Bank was a misrepresentation. ***After*** communications and concerns expressed of possible violations by Spring Lake Apartments to deprive her an apartment, the Plaintiff was allowed to enter into a written lease agreement. This being the beginning of Defendants Melody Crews, Spring Lake Apartment LLC and Dial Equities, Inc. ("Dial Defendants") violation of Plaintiff's Civil and Constitutional rights. Moreover, a beginning of a pattern of illegal/unlawful conduct against the Plaintiff.

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[3] Information redacted on Exhibits where applicable.

25. The Housing laws of the state of Mississippi prohibits such unlawful practices as those rendered the Plaintiff by the Defendants.

26. While the Plaintiff met all of the prerequisites to lease and/or rent her residence: a) proof of employment; b) proof of previous rental history; and c) proof that monthly income was 3.5 the amount of rent; Defendants insisted on subjecting the Plaintiff to further strict and stringent requirements in an effort of preventing her from renting property. Defendants doing so in an effort of depriving the Plaintiff equal housing opportunity.

27. On August 18, 2005, the Plaintiff contacted Defendants and advised of concerns of whether or not its practices are in compliance with Housing laws. A copy of said document is attached as **Exhibit "4,"** and is hereby incorporated and made a part of this pleading.

28. On September 15, 2005, Plaintiff entered into a written lease agreement, under which Defendant Spring Lake Apartments leased its apartment located at 1434 Hawthorne Cove, Jackson, Mississippi 39272 for a period of approximately one (1) year. A copy of the lease agreement is attached as **Exhibit "5,"** and is hereby incorporated by reference.

29. On September 15, 2005, Plaintiff entered into possession of the described premises pursuant to the lease between Plaintiff and Defendant Spring Lake Apartments.

30. Plaintiff has duly performed all conditions, covenants, and promises required to be performed by Plaintiff under the laws governing Landlord and Tenant matters and/or under the lease in accordance with its terms and condition, except for those acts that have been prevented, delayed or excused by acts or omissions of Dial Defendants.

31. On or about September 17, 2005, Plaintiff complained to Dial Defendants about concerns of not having power (utilities) for approximately three (3) days and having to move in under such conditions.

32. Prior to moving in Plaintiff was provided a "*Welcome to Spring Lake*" brochure from Spring Lake Apartments notifying her of her new address and contact information for utility company, phone company, and cable company information, and requested by Spring Lake Apartments to "*Please provide confirmation of conversion of electricity upon lease signing.*" Prior to moving in, Plaintiff had fulfilled the requirements listed therein of the "*Welcome to Spring Lake*," brochure prior to obtaining possession of premises.

33. On September 17, 2006, Plaintiff notified Crews of the concerns of water found in the storage unit of her apartment and asked whether or not there had ever been report of roof leaks in her apartment. Crews advised the Plaintiff there had not been. Based upon said affirmation and representation given by Crews, Plaintiff proceeded to have her possessions stored in the storage closet of her apartment. Although provided with such concerns, Dial Defendants failed to check and or investigate the concerns Plaintiff reported.

34. On September 23, 2005, Plaintiff followed up said concerns with the conditions of her apartment at move-in, in a letter entitled, "CONCERNS: Residency at Spring Lake Apartments." In Paragraph 1) of said letter, Plaintiff addresses concerns of not having utilities upon move-in. Plaintiff had fulfilled the requirements provided by Spring Lake Apartments to insure that utilities would be transferred; however, Dial Defendants failed and/or perform its duty to insure that the utilities would be up and going at the time of move-in for Plaintiff; moreover, Dial Defendants failed to contact the utility company to assure that services were on and/or transferred over into its name in between the occupancy of residents renting apartment. In Paragraph 2) of said letter, the Plaintiff addresses the conditions at move in. Moreover, request "*Can you tell me whether or not there has been any reports of leaks from the roof of this apartment?*" Dial Defendants aware of the condition of the apartment prior to rental, conspired

and agreed not to address said concerns of Plaintiff and even upon written demand for information from the Plaintiff, Dial Defendants continued to ignore and failed to inspect and/or check the roof of Plaintiff's apartment. Paragraph 3) of said letter confirms that Plaintiff performed obligations to transfer her services prior to move in. Paragraph 4) of said letter addresses concerns of unauthorized entry by Dial Defendants and notification of concerns of ***invasion of privacy***. A copy of said document is attached as and made a part of this pleading by reference to the original complaint. See **Exhibit "6"** attached hereto and incorporated by reference. Evidencing when Dial Defendants were first placed on notice of roof damage and/or concerns of Plaintiff. Acts in furtherance of conspiracy alleged by Plaintiff.

35. Considering the conditions and the hardships Plaintiff sustained at move-in, she requested that Dial Defendants make the necessary allowances for the inconvenience. Said request was in compliance with Paragraph 27 of Lease Agreement.

36. Dial Defendants refused to allow for any inconvenience and hardships suffered by the Plaintiff. Plaintiff paid the rent for September 2005. Said rent was received and retained by Dial Defendants.

37. In October 2005, Plaintiff paid October rent on time. Said rent was received and retained by Dial Defendants.

38. On October 22, 2005, Plaintiff provided Dial Defendants with "*Inventory and Condition Form*" advising of damage found, condition, etc. of her apartment. Until the Inventory and Condition Form was submitted by Plaintiff, Dial Defendants retained her mailbox key.

39. Although Plaintiff provided the *Inventory and Condition Form* required by Dial Defendants and required before she received her mailbox key, the Plaintiff encountered problems with obtaining mailbox key in a timely manner.

40. On November 2005, Plaintiff paid November rent on time. Said rent was received and retained by Dial Defendants. On or about November 3, 2005, Dial Defendants advised that they would be conducting inspection of property. Dial Defendants doing so by placing a notice on Plaintiff's door.

41. On November 5, 2005, Plaintiff contacted Dial Defendants by correspondence entitled, "NOTICE (undated) of November 3, 2005" in regards to notice left on her door and advised that she requested to be present for said inspection; moreover, Plaintiff shared *concerns of why an inspection was not performed on her apartment* ***prior*** *to her move in.* An inspection on Plaintiff's apartment in which she had only occupied for approximately **1½** month prior to notice.

42. On or about November 9, 2005, Plaintiff took off the time from work to be present for the inspection. However, Dial Defendants did not show up. Said inspection was rescheduled for Friday, November 11, 2005.

43. On November 11, 2005, Crews performed an approximate ***one***-minute inspection of Plaintiff's apartment. Crews did not inspect and/or request to see the damage areas reported on the "*Inventory and Condition Form*" submitted by the Plaintiff, although concerns of inspection of residence were made known to Dial Defendants. Neither did Crews address damage reported during this one-minute inspection.

44. In November 2005, Plaintiff's apartment sustained water damage as a result of a roof leak in the storage unit of her apartment.

45. On December 2, 2005, Plaintiff submitted partial payment of rent along with letter entitled, "NOTIFICATION: Spring Lake Apartments Failure to Maintain Property and December 2005 Rent," with copies of photographs which evidence roof leak; and additional damage reported and/or noted on the Inventory and Condition Form submitted in October, 2005, explaining reason for partial payment. See **Exhibit "7"** attached hereto and incorporated herein.

46. Immediately upon Dial Defendants receipt of Plaintiff's December 2, 2005 letter, Plaintiff contends that the Dial Defendants continued their discriminatory treatment and conspired to cover-up/mask their unlawful actions by creating documents in an effort to justify the discriminatory treatment of gross negligence and/or negligence and failure to maintain its property. **AFTER**, Plaintiff retained part of the rent, in furtherance of conspiracy, did the Dial Defendants began to conspired and/or plot to seek ways to have her removed. Moreover, Dial Defendants creating and/or altering documents in an effort to shield an illegal animus – pretext purposes. Discriminatory intent formed the basis for the gross negligence and/or negligence, failure to repair, damage, theft and/or destruction to Plaintiff's property.

47. Pursuant to Paragraph 22 – HOLD HARMLESS, of the Lease Agreement, "*Lessor shall not be liable for any damage, loss or injury to persons or property occurring within the Premises or upon any other areas of the community* ***except*** ***as a result of Lessor's gross negligence.***" Boldface and italics added for emphasis. See **Exhibit "2"** attached hereto and made a part of this Complaint. Boldface, italics and underline added for emphasis.

48. On December 5, 2005, Plaintiff submitted a letter entitled, "SPRING LAKE APARTMENTS BREACH OF LEASE AGREEMENT" citing some of Dial Defendants violations under the Lease Agreement. In said letter, the Plaintiff addresses statement made by Crews to her, *acknowledging* **another** tenant's failure to pay rent and asserting ***similar***

arguments as the Plaintiff in a court action. A matter in which Crews represented to the Plaintiff was ruled in favor of Dial Defendants. Thus, establishing that Dial Defendants have a pattern and/or practice of not repairing its property and when tenant's refuse to pay, the Dial Defendants proceed to bring legal actions against the Tenants rather than repair and/or fix the problems reported.

49. Furthermore, in said letter, the Plaintiff provides the Dial Defendants with information regarding Landlord and Tenant laws and/or statutes. Plaintiff also requested that, "*THEREFORE, PLEASE TAKE NOTICE, considering the most recent behavior by Ms. Crews/Spring Lake, I am requesting that a representative from the main office (Dial Properties – or applicable office) notify me in writing. . . of how it intends to handle this matter and how I am to go about recouping rent Spring Lake has received from me for my apartment which was not in full repair as it led me to believe. Damage Spring Lake having knowledge of or should have had knowledge of based on my correspondence and communication I have had with management Spring Lake, yet failed to repair although it continued to receive and accept my rent payments month-after-month.*" Said request of Plaintiff's was again ignored by Dial Defendants and they elected not to have a representative from their main office contact Plaintiff; allowing Crews to continue to represent them in an unlawful and illegal manner in which they condoned and gave their blessing.

50. Plaintiff provided Dial Defendants with applicable statute and/or case law to assist in explaining to Dial Defendants said breach and/or violation of the laws. Through said letter, the Plaintiff addresses concerns of retaliation by Dial Defendants advising, "*I will like to reiterate my concerns of Spring Lake's/Ms. Crews or its representatives' retaliation against me for Spring Lake's breach in the lease agreement entered into and my reporting of same. Also, I*

believe that Ms. Crews' ill attitude and ill approach in the handling of this matter is unprofessional and unacceptable for the image that Spring Lake has led me to believe it expects of its staff." Even with said notification and warning from the Plaintiff, the Dial Defendants in furtherance of their conspiracy, made a conscious decision to endorse the retaliatory actions of Crews and continued to surge forward, seeking to have the Plaintiff illegally and unlawfully removed from her residence.

51. On December 8, 2005, in response to letter of Crews dated December 7, 2005, Plaintiff again provided Dial Defendants with a letter entitled, "SPRING LAKE APARTMENTS BREACH OF LEASE AGREEMENT" wherein Dial Defendants were advised that Plaintiff did not waive any rights she may have under the Landlord and Tenant laws. Plaintiff directed the Dial Defendants to case law which governs said matters, and thus provided Dial Defendants with ample information should they want to further inquire into the Landlord and Tenant laws, if Dial Defendants wanted to, so that they would have a better understanding as to the legal grounds on which Plaintiff stood. Moreover, the Dial Defendants record will reflect that they had *well over thirty* (30) *days* notification of damages and concerns reported by the Plaintiff; however, elected not to repair damage(s) and/or defects reported by the Plaintiff.

52. The Plaintiff on numerous occasions advised Dial Defendants that she would make either herself or someone else available to present for any inspections and/or access to her residence.

53. The Plaintiff made herself or someone else to be available to assist Dial Defendants in obtaining access to her residence for any inspections and/or repairs being performed by them.

54. On or about December 15, 2005, Dial Defendants had the storage unit painted without repairing the roof.

55. Plaintiff was not required to make repairs first, neither do the Defendants have the right to cast such burden of repairs they were to make upon the Plaintiff. 40 A.L.R. 1448, 1473. In *Hexter v. Knox*, 63 NY 561 the court found:

> Upon the failure to perform it was the right of tenant to make the repairs and charge the expense to the landlord. ***But he was not bound to make the repairs***. The defendant was during the time the plaintiff was deprived of these rooms, engaged in constructing the new building and repairing the old one. He had due notice of their condition. He had *no right to cast upon the plaintiff the responsibility and the burden of* ***repairs which he was bound to make***. The plaintiff removed the furniture from these rooms; and so far as he could, short of making the repairs himself, limited the injurious consequences of the defendant's negligence.

56. Pursuant to Miss. Code Ann. § 89-8-23, Defendant had a responsibility to perform the duties owed the Plaintiff.

57. On December 16, 2005, Plaintiff requested that Dial Defendants produce documentation showing that the roof of her apartment had been repaired. After a heavy rain, the storage unit of her apartment still evidenced roof damage.

58. On January 4, 2006, still not having received documentation from Dial Defendants that the roof of her apartment had been repaired, Plaintiff provided partial payment of rent. Through said letter, the Plaintiff explained reasons for withholding part of rent.

59. On January 5, 2006, Plaintiff submitted correspondence to Dial Defendants sub-titled, "*Confirmation of Receipt of Voice Mail that Spring Lake Will Seek Legal Action.*" In said correspondence Dial Defendants were notified that if such actions are brought against her, she will seek legal action against Dial Defendants.

60. Dial Defendants left such a threatening voice mail with knowledge there **was no probable cause** in which they could rely upon to justify legal action against Plaintiff; moreover, that there were no laws that would support any action they would take against Plaintiff. Furthermore, the voice mail message further supports actions of Dial Defendants being willful, malicious and wanton.

61. On January 12, 2006, through correspondence entitled "SPRING LAKE APARTMENT'S BREACH OF CONTRACT" and sub-titled, "Spring Lake Apartment Community Three-Day Notice To Pay Or Quit," Plaintiff notified Dial Defendants of receipt of "THREE-DAY NOTICE TO PAY RENT OR QUIT," wherein Dial Defendants were advised and/or put on notice that: a) "said document **is not** valid, is in violation of the laws governing Landlord and Tenant matters in the state of Mississippi and other governing laws, and is in furtherance of the illegal and unlawful actions of Spring Lake Apartments and its representatives in its BREACH of the Lease entered into with Ms. Newsome under the laws governing said matters. . .," b) Dial Defendants were advised that Plaintiff would not be submitting additional rent Dial Defendants assert was owed, nor would the Plaintiff be delivering up possession of her premises in that the laws governing said matter does not require her to do so; c) Dial Defendants were further advised that Plaintiff's "legal rights under the applicable laws governing said matters will not be waived, nor is her right not to pay rent Spring Lake Apartments is asserting is still owed to be taken as Ms. Newsome's forfeiting any and all rights, privileges and entitlement to her residence," d) Dial Defendants were advised and placed on notice that, the "Three-Day Notice to Pay Rent or Quit is clearly in violation of the laws and is merely done to harass, embarrass, humiliate and deprive Ms. Newsome of protected rights. . . Ms. Newsome is placing Spring Lake Apartments and its representatives on NOTICE that such harassment and further

unlawful practices by Spring Lake Apartments and its representatives have taken against her is to HEREBY *CEASE* IMMEDIATELY," e) Dial Defendants are to preserve their records; f) Plaintiff's correspondence further stated, "*is **demanding** that any and all further correspondence and/or documentation be handled **through legal counsel** for Spring Lake Apartments to her.*" Plaintiff's notification and request being timely, adequate and proper to afford Dial Defendants the opportunity to consult legal advice prior to filing any action against her.

62. Prior to filing its complaint against the Plaintiff in Justice Court, the Dial Defendants had opportunity(s) to contact attorney(s) to determine if their action it intended to take against the Plaintiff were within the laws governing Landlord and Tenant matters. Moreover, whether there was probable cause to support their action, with or without the advice of legal counsel, Dial Defendants decided to allow Crews to file a lawsuit in the Justice Court against the Plaintiff. Said filing being in furtherance of the conspiracy against the Plaintiff to deprive her of rights secured under the Civil Right Act, Constitution and other applicable laws.

63. On January 23, 2006, upon receipt of Summons to Tenant, Plaintiff immediately filed her pleading entitled, "*Request for Extension of Time to Answer Summons to Tenant and Request to Stay of Proceedings Before the Court.*" Said pleading, *although not required in that process of service was improper,* was timely submitted. A copy of said document is attached as **Exhibit "8,"** and made a part of this pleading.

64. The Plaintiff **never** waived Service of Summons in this action. Neither did the Plaintiff waive the service of summons on herself. See Miss. Code Ann. § 13-3-71.

65. Mississippi law is clear on this issue as how summonses in civil cases/actions in Justice Courts are to be handled. Pursuant Miss. Code Ann. §13-3-5(2). The Summons:

(2) The process to bring in defendants in all civil actions in ***justice court***[4] shall be a summons which shall be served in one of the following modes:

First. – Upon the defendant personally, if to be found in the county, by ***handing*** him a true copy of the process.

Second. – If the defendant cannot himself be found in the county, then by leaving a true copy of the process at his usual place of abode, with his wife or some other person of his family above the age of (16) years, and will to receive such copy.

Third. – If the defendant cannot himself be found, and if no person of his family aged sixteen (16) years can be found at his usual place of abode who is willing to receive copy such copy, then by posting a true copy on a door of the defendant's usual place of abode; provided, however, ***if this mode is used*** *when the defendant's usual place of abode* ***is a multi-family dwelling, a copy of the summons shall be mailed to the defendant*** *by the clerk of the court upon return of service.*

The Plaintiff the Justice Court action against her, was never personally served with process in that action. Therefore, as a direct and proximate result of Defendant Lewis' failure to serve the Plaintiff in accordance with the laws governing said matters, Plaintiff was deprived equal protection of laws and due process of laws. Rights secured under the Constitution.

66. The **justice** court law is clear on this matter when dealing with **multi-family dwellings:**

3.4 SUMMONS

D. How Summons is Served

Section 13-3-33 of the Code prescribes the proper methods for service of a summons from justice court:

1) Upon the defendant personally, if to be found in the county, by handing him an accurate copy of the process.

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[4] Boldface underline and italics added for emphasis.

2) If the defendant cannot himself be found in the county, then by leaving an accurate copy of the process at his usual place of abode with his wife or some other person of his family above the age of sixteen years, and willing to receive such copy.

3) If the defendant cannot himself be found, and if no person of his family aged sixteen years can be found at his usual place of abode who is willing to receive such copy, then by posting an accurate copy on a door of defendant's usual place of abode. *However, this type of service of summons* ***is not permitted if the defendant lives in multi-dwelling***.

See, Mississippi Law Research Institute HANDBOOK For MISSISSIPPI JUSTICE COURTS – Approved and/or Endorsed by former Attorney General Mike Moore.

67. Important to note: (a) Plaintiff was not hiding and was and could easily be found; (b) the Defendants in this matter had knowledge of Plaintiff's employer and on several occasions had called the Plaintiff at her place of employment, moreover, possible times wherein she could be found at her residence/abode; (c) Defendants had advised the Plaintiff that legal action would be sought against her; therefore, Plaintiff was aware of the Defendants' intentions and would have gladly upon receipt of a phone call, advised Defendants as to a time she would be home for service; (d) nevertheless, the Summons to Tenant was left in the crack and/or tucked away between the doorknob and door lining of the Plaintiff's apartment and was left on Monday, January 23, 2006; (e) while § 13-3-5(2) allows for posting of Summons on the door, *said process of service* ***must*** *be followed up by the Clerk of the Court with a mailing of said Summons to the Defendant.* In the matter before the Justice Court, the Clerk failed to mail the Plaintiff a copy of said Summons – thus further supporting the method used in service of process improper.

68. On January 26, 2006, after not hearing anything from the Court as to whether or not her Requests would be granted, Plaintiff followed up January 23, 2006, submitting

correspondence to the Hinds County Justice Court via facsimile and mail. A copy of said document is attached as **Exhibit "9,"** and made a part of this pleading.

69. On January 27, 2006, the Hinds County Justice Court Clerk's Office contacted Plaintiff and advised that her Requests had been denied and that Judge Skinner would be hearing the matter as scheduled.

70. On January 27, 2006, a hearing was held in the Hinds County Justice Court before Judge Skinner (Defendant "Skinner") against Plaintiff's objections. The Hinds County Justice Court rendered a judgment in favor of Defendant, Spring Lake Apartments. The Plaintiff contends that the judgment was moot/void in that there was no service of process filed in the matter in Hinds County Justice Court and the service of summons was improper.

71. Notwithstanding, the Plaintiff made a special appearance before the Justice Court after being advised by Justice Court representative that she was to appear, and noticed said Court that her appearance was to address the issue surrounding service of process. The Plaintiff contends that the Justice Court unlawfully entered judgment against her on January 27, 2006.

72. Defendant Skinner advised the Plaintiff that she would have thirty (30) days in which to file an appeal. Thus, which would give the Plaintiff until February 27, 2006, in which to file her Appeal.

73. While Skinner advised the Plaintiff she had thirty (30) days in which to file her Appeal, he knowingly, deliberately and intentionally failed to advise the Plaintiff that she only had ten (10) days in which to file the Notice of Appeal. Skinner was banking on the fact that the Plaintiff would fail to file a timely Notice of Appeal and would wait until 30 days in which to file an appeal and clearly miss this important step. The act of Skinner was willful, malicious,

deliberate and wanton and done in an effort of depriving the Plaintiff equal protection of laws and due process of laws. Rights secured under the Constitution.

74. At no time during the January 27, 2006 hearing, did the Plaintiff waive service of process in the Justice Court matter.

75. During the January 27, 2006 hearing, Skinner upon glancing through Plaintiff's January 23, 2006 submittal, inquired of the Plaintiff whether or not she was a lawyer. Plaintiff answered in the negative. Plaintiff believes that from her observation and from Skinner's question he had prejudice himself against her. Plaintiff believes said prejudice may be do to the fact that she is African-American, educated and not a lawyer. Masking such animosity through a frivolous ruling in favor of Spring Lake Apartments.

76. Skinner having no factual evidence to support he had jurisdiction of the Plaintiff or the subject matter. Neither did Skinner request and/or require that the Constable, Defendant Lewis, be present to be questioned in regards to service of process. As a matter of law, Defendant Lewis was to attend the Justice Court matter. Plaintiff was challenging the service of process, therefore, as a matter of law, Lewis' testimony and proof of service is required. Said failure to inquire into the how service of process violated laws and deprived the Plaintiff of equal protection and due process of laws. Rights secured under the Constitution.

77. On January 27, 2006, the Plaintiff placed both Skinner and Dial Defendants on notice that she would be filing a post-trial motion addressing the error in Skinner's ruling. See **Exhibit "10"** attached hereto and incorporated by reference.

78. On January 28, 2006, the day after Crews notified the Justice Court that roof repairs were made, Jackson received heavy rain. Again, Plaintiff's storage unit sustained water damage and the living room area evidenced water damage. The testimony provided by

Defendant Crews in Justice Court alleging the roof leak in Plaintiff's apartment had been repaired was false. Testimony provided by Crews was in furtherance of the conspiracy alleged herein and done with purposes of engaging Skinner into same; moreover, to obtain a ruling in Spring Lake's favor.

79. In order to obtain the object sought – depriving Plaintiff of her residence and rights secured under the Civil Rights Act, Constitution and other applicable laws – Crews knew that Dial Defendants would need the assistance of Skinner and other willing cohorts. Said Defendants had already illicitly obtained the services of Lewis, and was also successful in that of Skinner and his participation in the conspiracy.

80. On January 30, 2006, the Plaintiff filed a *timely* "*Motion to Amend and/or Vacate the Judgment.*" On the same date, the Justice Court did not entertain the Motion and moved forward to enter a Judgment for Spring Lake. On or about January 30, 2006, the Judgment in this matter was entered by the Justice Court clerk's office. As a matter of law, the Plaintiff had ten (10) days from the entry of judgment to file Notice of Appeal. Which would give the Plaintiff until February 10, 2006.

81. On January 30, 2006, Skinner entered Judgment in favor of Spring Lake Apartments. The acts by Skinner exceeded his judicial authority in that he had no jurisdiction over the Plaintiff nor the subject matter. Nevertheless, Skinner took it upon himself to enter a Judgment not signed by either of the parties in the Justice Court action. Moreover, entering and signing said judgment as Plaintiff Newsome's attorney in that action. See **Exhibit "11"** attached hereto and incorporated by reference. Plaintiff at no time ever retained Skinner to represent her in the Justice Court action; therefore, he erred in entering and signing Judgment as Plaintiff's attorney in that action.

82. On February 6, 2006, to Skinner's disappointment, the Plaintiff filed a timely Notice of Appeal. Said filing was well within the time frame permitted to file Notice. While the Notice may have been filed in the wrong court (Justice Court), said Court accepted and stamped receipt of same. The Justice Court failed to notify the Plaintiff of any error (if any) of filing in the wrong court; moreover, the Justice Court failed to forward the Notice of Appeal to the appropriate Court. Regardless, the fact remains that the Justice Court **never** obtained jurisdiction over the Plaintiff or the subject matter in that legal process in that action was never perfected as required by law. Said failure to perfect service of process deprived the Plaintiff of equal protection of the laws and due process of laws. Rights secured under the Constitution of the United States.

83. On February 6, 2006, Skinner aware that he had failed to advise the Plaintiff that she has ten (10) days to file a notice of appeal, willfully, maliciously and wanton executed a Warrant of Removal with hopes that the Plaintiff would not file her Notice of Appeal in time.

84. On February 13, 2006, the Plaintiff returned to her residence and found a Warrant of Removal. The plaintiff contends that the *Warrant of Removal* was void, nonbinding and of no legal effect because the process of service of the Summons was not perfected as required by law.

85. On February 13, 2006, the warrant of removal was left in the crack of the door of the Plaintiff's residence. The plaintiff contends that the warrant was improperly served.

86. The service of Warrant of Removal failed to meet the requirements mandated by law for service pursuant to Miss. Code Ann. § 11-25-11.

87. On February 6, 2006, eager, and in furtherance of the conspiracy Skinner had entered into with Dial Defendants, he executed *Warrant of Removal*. Said execution was had approximately seven (7) days **prior** to the posting on Plaintiff's door. Moreover, there is no

evidence on said warrant to support that the Justice Court ever **ISSUED** process on it. Thus, it is not certain who, Dial Defendants or Lewis who served the warrant; however, what is clear is that service of same was also abused, as that with the legal process in the handling of Summons to Tenant.

88. On February 14, 2006, the Defendants were notified through correspondence that the Plaintiff would seek an injunction and restraining order against them to prevent further unlawful proceedings and/or actions against her. Dial Defendants were notified by facsimile. See **Exhibit "12"** attached hereto and incorporated by reference.

89. Despite such effort to Dial Defendants notifying them that Plaintiff would seek to obtain an injunction and restraining order, said Defendants awaited notification from John Doe 1 and/or Jane Doe 1 of Plaintiff's leaving her residence and then contacted Lewis who in turn brought with him John Doe 6. Dial Defendants along with Defendants Lewis, John Does 1-5 and John Doe 6, then proceed to illegally and unlawfully enter the Plaintiff's residence in her absence and remove her property and help themselves to whatever property they desired for themselves and left the rest for other employees, tenants and guest to help themselves to.

90. Upon returning home on February 14, 2006, Plaintiff found Defendants Melody Crews, Spring Lake's employees (John Does 1-5), the Constable and John Doe 6, in her apartment unlawfully removing her possession. The Defendants were provided with a copy of the filed *Motion for an Emergency Injunction and Restraining Order* against the Defendants and their representatives. A copy of said pleading was also mailed to the Defendants.

91. Plaintiff politely asked said Defendants to cease from their unlawful actions and advised them that they were violating her rights. To no avail.

92. Plaintiff then called an attorney she worked with and advised him what was going on. Said attorney was shocked to find out that Plaintiff's property was being removed in that he had knowledge that the Plaintiff had filed a post-trial motion. Said attorney was interested in whether or not there was a ruling on it. Plaintiff answered in the negative.

93. Upon hanging up, the Plaintiff then asked the Defendants present to again cease from such unlawful actions. Lewis advised the Plaintiff to go outside the apartment in which she did. At such time Lewis made a call to an unidentified person[5] and advised them that the Plaintiff had just provided him with a copy of the Injunction and Restraining Order she filed with the Courts. Lewis wanting to know how to handle. Upon hanging up, Lewis instructed the remaining Defendants Crews and John Does 1-5, to carry on with their actions.

94. Lewis came out to the entrance and insisted that the Plaintiff leave. Plaintiff advised Lewis that she had a right to be there. At which time, Lewis then took it upon himself to unlawfully search the Plaintiff and remove personal property, place handcuffs on her and tell her that she was under arrest.

95. When the Plaintiff inquired as to why she was being arrested, Lewis failed to tell her why and advise her of any rights she may have had in the handling of this arrest.

96. Lewis advised Plaintiff that she was being taken to the Hinds County Detention Center. Plaintiff expressed concerns as to why she was being taken to the Hinds County Detention Center and also the direction in which Lewis was taken.

97. During the trip, Lewis advised the Plaintiff that she was not an attorney. Plaintiff advised Lewis that, that was the second time she heard that. First from Skinner and then from him. Plaintiff then shared concerns of being discriminated against because she is an African-American who is educated and concerns that Lewis and Skinner seemed to have a problem with

[5] Once name is identified, this Complaint will be amended.

that. Plaintiff went on to advise Lewis that she was a graduate of one of the top African-American Universities in the country and that many of her people died for the rights in which he was violating. To no avail.

98. Plaintiff advised Lewis that she would be bring legal actions against him as well as other parties for the unlawful and illegal actions rendered her.

99. The plaintiff advised Lewis and John Doe 6 that the actions taken were unlawful. At all times the Plaintiff remained civil and maintained the peace. The Constable in violation of her right to freedom of speech placed the Plaintiff under arrest and took her to the Hinds County Detention Center in Raymond, Mississippi where she was booked. Despite being arrested, the Plaintiff has to date not received a court date or further process of Court. The plaintiff contends that at all times the Defendants knew or should have known that their actions to evict the Plaintiff were discriminatory, retaliatory and the fraudulent use of the Court system in order to carry out their discriminatory actions.

100. On February 14, 2006, upon being released from the Hinds County Detention Center, the Plaintiff returned home to retrieve her car and what was left of her belongings which had been left on the lawn/grass of Spring Lake Apartments.

101. Prior to February 14, 2006, Plaintiff had never been arrested and booked.

102. Defendants have a history of not repairing its property, and when tenants complain, rather than repair the property, as required by law, the Defendants elect to have them unlawfully removed and/or bring legal actions against tenants. See **Exhibit "13"** list of Removal lawsuits filed by Defendants against tenants, attached hereto and herein made a part of this Complaint. Also see **Exhibit "14"** wherein Crews advise Plaintiff that another tenant made similar arguments as hers for reasons of not paying rent.

103. Defendants have sought **Removal** actions against the following tenants in the Hinds County Justice Court:

File Date	Judge	Tenant(s)/Resident	Book	Page
08-19-02	Sutton	Wallace Leslie	2541	160
12-13-02	Boland	Moore John	2341	364
10-27-03	Boland	Brown Crystal	2344	350
12-12-03	Chapman	Adams Frank	2244	652
12-12-03	Sutton	Skipper Felicia	2545	620
03-08-05	Boland	Newsome Edna & Joel	2348	196
08-15-05	Chapman	Luke Carrie	2249	454
08-15-05	Sutton	White Patrick	2550	423
11-14-05	Skinner	Ravarino Eva & Martin Virginia	2150	66
11-14-05	Skinner	Smith Mary & Tania	2150	67
11-14-05	Chapman	Hill Tunya	2250	71
11-14-05	Boland	Howard Kenneth & Collett	2350	65
11-14-05	Britton	Payton Michael	2449	987
11-14-05	Britton	Jordan Sandra	2449	988
11-14-05	Britton	Shelton Nikita	2449	989
11-14-05	Britton	Casnel Cassandra	2449	990
11-14-05	Sutton	Sampson Stephanie	2551	37
11-14-05	Sutton	Martin Robin & Cam Lauren	2551	39
12-13-05	Skinner	Howard Kenneth	2150	303
12-13-05	Skinner	Robinson Darrell	2150	304
12-13-05	Chapman	Jordan Sandra	2250	306
12-13-05	Chapman	Clark Shea Ross	2250	307
12-13-05	Boland	Quick Misty	2350	301
12-13-05	Boland	Sierra Building Supply	2350	302
12-13-05	Britton	Cavett Meranda Jackson Latisha	2450	226
12-13-05	Britton	Sampson Stephanie	2450	227
12-13-05	Sutton	Roberts Melissa	2551	271
12-13-05	Sutton	Fulghum Ken	2551	275
12-13-05	Sutton	Payton Michael	2551	276
12-14-05	Boland	Martin Virginia	2350	325
12-14-05	Britton	Benninghoff Courtney	2450	250
12-15-05	Britton	Cornelius Gregory	2450	277
12-27-05	Sutton	Khader Melissa	2551	393

01-11-06	Skinner	Ross-Clark Shea	2150	481
01-11-06	Chapman	Clarke Nikki	2250	485
01-11-06	Chapman	Cornellius Gregory	2250	486
01-11-06	Chapman	Murray Carolyn	2250	487
01-11-06	Boland	Sampson Stephanie	2350	480
01-11-06	Boland	Holliday Ken	2350	481
01-11-06	Britton	Benninghoff Courtney	2450	404
01-11-06	Britton	Palmer Deborah	2450	406
01-11-06	Sutton	Dew Andrea	2551	453
01-11-06	Sutton	Stevenson Debra	2551	454
01-11-06	Sutton	Shelton Nikita	2551	455
01-17-06	Skinner	Newsome Vogel	2150	539

104. The excessive amount of Removal Complaints filed by the Defendants clearly evidences that there is a problem at Spring Lake Apartments. In January 2006 there were approximately twelve (12) Complaints of Removal filed by Spring Lake Apartments. In December 2005, there were approximately fifteen (15) Removal Complaints filed by Spring Lake Apartments. In November 2005, there were approximately ten (10) Removal Complaints filed by Spring Lake Apartments. Bringing the average of Complaints filed by the Defendants to approximately 12.33 of the past three (3) months.

105. A high rate of Removal Complaints filed by Defendants whose property is approximately five (5) years old. In 2002, there were approximately two (2) Removal Complaints filed by Defendants; in 2003 approximately two (2); and none in 2004, according to documentation submitted by the Hinds County Justice Court's Office. However, for the past three (3) months the number of Removal Complaints filed by the Defendants had escalated; moreover, said Complaints coming shortly on the aftermath of Hurricane Katrtina.

106. The Defendants averaging about two (2) cases per month before Judge Skinner for the past three (3) months. Thus, Judge Skinner was very familiar with the Defendants and the Defendants with Judge Skinner.

107. Of the cases the Defendants brought before Judge Skinner from November 2005 to January 2005 (approximately three (3) months), two were dismissed.

108. The Defendant Spring Lake Apartments entered into a Lease Agreement with the Plaintiff with knowledge and/or should have known that the roof of the apartment leased to Plaintiff was not in fully repair and/or was damaged.

109. On August 11, 2006, Plaintiff submitted her Notice of Intent to File a Lawsuit and Official Complaint Against Hinds County Constable Jon C. Lewis via Certified Mail and Return Receipt upon the Clerk of the Hinds County Board of Supervisors and Honorable Douglas Anderson, *President* of Hinds County Board of Supervisors.

COUNT ONE
MALICIOUS PROSECUTION
(Against Dial Defendants and participating Defendants)

Plaintiff herein incorporates the Paragraphs 1 through 109 as if set forth in full herein. In support of her malicious prosecution claims the Plaintiff relies upon case laws governing said matter, some of which are attached hereto at **Exhibit "15"** and incorporated herein by reference; therefore states as follows:

110. This action has been brought to redress the unlawful and illegal acts of the Dial Defendants for malicious prosecution against the Plaintiff.

111. On January 16, 2006, Dial Defendants commenced a civil action against Plaintiff for in the Hinds County Justice Court of Hinds County, Mississippi, claiming $379.50 as damages. A copy of the complaint in that action is attached hereto as **Exhibit "16"**, and incorporated herein by reference.

112. Dial Defendants maliciously caused legal process in the Justice Court action to issue.

113. *Summons to Tenant* was executed on January 17, 2006, and issued on January 20, 2006, and **was not** personally served on the Plaintiff as required by law; however was posted approximately **six (6)** days later and although Posted notification was ***falsified*** noting that Summons was posted on January 21, 2006, when in fact it was not posted until January 23, 2006 by the Constable Lewis of Hinds County, Mississippi. What is clear is that such method of process violates the laws governing said matters, and in the rendering of said violation, the Plaintiff was deprived of equal protection of laws and due process of laws secured under the United States Constitution and other applicable laws governing said matters.

114. Falsifying return is prohibited by law pursuant to Miss. Code Ann. § 19-19-13 as well as other laws governing said matters.

115. While Lewis and Dial Defendants may want to assert that process posted on January 21, 2006, which was a Saturday, the Plaintiff was at her residence that day, the following day and the morning and evening of January 23, 2006. No attempts were made to ***first*** personally serve the Plaintiff.

116. The posting of process ***only*** four (4) days before the hearing/trial also is in violation of the laws governing said matters and applicable laws governing Landlord and Tenant matters. Thus, in furtherance of conspiracy and depriving the Plaintiff rights secured under the Constitution.

117. No Proof of Service of how process was handled in this matter was ever filed with the Court. Neither did the Lewis attend the trial/hearing set by the Court. Said attendance is not discretionary; however, is mandated by law pursuant to Miss. Code Ann. § 19-19-7. Also see, **Exhibit "17"** attached hereto and incorporated by reference.

118. Posted Process notice was falsified to cover up the abuse of process and conspiracy actions of Dial Defendants and Lewis. Said acts were done in furtherance of the object pursued – to deprive the Plaintiff her residence and rights secured under the Landlord and Tenant Act, Civil Rights Act, Constitution and other applicable laws. The Dial Defendants never wanted the Plaintiff living on their property and sought from the beginning since Plaintiff applied to deprive her of rights protected under the laws and the Constitution.

119. On January 27, 2006, judgment in Justice Court action was rendered in favor of Spring Lake Apartments to recover of $379.50, and costs of suit. See Abstract Judgment attached hereto as **Exhibit "18"** attached hereto and incorporated by reference.

120. Dial Defendants in furtherance of the conspiracy instigated, prosecuted and continued their legal action filed in the Hinds County Justice Court with knowledge there was no probable cause for bringing said action.

121. Dial Defendants acting willful, malicious and wanton intent.

122. Dial Defendants brought the Justice Court action for purposes of retaliation, vexation, harassment and to deliberately and consciously cause the Plaintiff injury and harm.

123. In furtherance of the conspiracy instituted by the Dial Defendants they instigated and contributed to the February 14, 2006, unlawful and illegal arrest of Plaintiff.

124. As a matter of law, because service of process was not perfected, no judicial proceeding in the Hinds County Justice Court could be had without jurisdiction and/or the waiver of service of process. Plaintiff waived no such right to service of process.

125. **Prima Facie Requirement: a)** Dial Defendants through their representative, Crews, maliciously instituted the Justice Court action against the Plaintiff; **b)** prior to and upon institution of such malicious prosecution by the Defendants, said prosecution was brought with

knowledge that it was contrary to case law and evidence and that bringing of said action was in violation Plaintiff's rights; **c)** in furtherance of Dial Defendants' conspiracy, they were able to ascertain an illegal and unlawful judgment from Skinner, **d)** Dial Defendants brought actions against the Plaintiff for malicious and improper purposes – i) never wanted to rent an apartment to the Plaintiff, ii) leased apartment to Plaintiff with knowledge that it was not in full repair; iii) failed to make the necessary repairs required under the lease agreement; iv) acted upon the illegal and unlawful *Warrant of Removal* was for purposes of destroying evidence in the action Dial Defendants were advised would be brought against them; v) acts by Dial Defendants were in furtherance of conspiracy; vi) Dial Defendants with knowledge that Plaintiff was not willing to give up her apartment in that she had a right to live there free of discrimination, retaliation, harassment, etc., conspired and engaged co-conspirators to aid them in having the Plaintiff removed from her apartment through unlawful and illegal means with knowledge that their acts violated the rights of the Plaintiff; **e)** Dial Defendants' Justice Court action lacked probable cause, and knowing so, said Defendants conspired to engage in abuse of legal process in said action; **f)** as a direct and proximate result, the Plaintiff was injured from such illegal and unlawful acts of the Dial Defendants and co-conspirators.

126. The record evidence will support that Dial Defendants had sufficient information provided them by the Plaintiff and available to them through a reasonable investigation to support they had no probable cause to bring action against the Plaintiff; however, in total disregard to the Plaintiff's right elected to bring a malicious lawsuit against her.

127. Dial Defendants were placed on notice to retain legal counsel; however, elected to allow Crews to represent them in the Justice Court action. Dial Defendants having full confidence in that Crews would accomplish the task assigned her in that they have been

repeatedly successful in not repairing their properties and having tenants evicted who complained of said violations and repeatedly relied upon the abuse of legal process, as that used on the Plaintiff. Furthermore, Dial Defendants were convinced that Crews would be able to ascertain the willful participation of Judge Skinner and would not be able to obtain the Plaintiff's apartment unless they engaged the services of Skinner in their conspiracy. In the end, Dial Defendants were successful in getting Skinner to participate, and engage and/or participate further in the unlawful and illegal acts rendered the Plaintiff.

128. Even if the Dial Defendants would want to assert that they relied upon the action and judgment of Judge Skinner, such argument must fail in that Dial Defendants were advised to seek legal representation and had in their possession sufficient information to conclude that Judge Skinner lacked jurisdiction and that any judgment rendered by him or the Justice Court in their action against the Plaintiff was **null** and **void** and therefore, could not be acted upon. As with the Dial Defendants, Skinner opened himself up for liability. Acts of Skinner being willful, malicious and want.

129. Malicious acts of the Dial Defendants were done to ruin and impair the credit of the Plaintiff. Dial Equities proceeded to do so by reporting Plaintiff to a collection agency which in turn committed acts they knew would appear on the Plaintiff's credit report.

130. In furtherance of said conspiracy the Dial Defendants through their representatives contacted the Plaintiff's employer to notify them of the lawsuit filed by the Plaintiff; doing so with malicious intent to have the Plaintiff terminated from employment. The Dial Defendants with improper motive relied upon their representatives relationship to Plaintiff's employer to influence the object of their conspiracy – the Plaintiff, and the termination of her employment in and effort to cripple the Plaintiff financially, damage her credit, conspired to

deprive her justice in obstructing justice. In the end, the Dial Defendants accomplishing the object pursued and getting the termination sought against the Plaintiff.

131. In actions for malicious prosecution, the net worth of Defendant(s) is permissible as a matter of law. See **Exhibit "15"** – Pg. 6, No. 5 - attached hereto and incorporated by reference.

132. Given the facts and evidence memorialized in the record of the Dial Defendants and Justice Court, a reasonable mind may conclude that said Defendants had no grounds to for filing their lawsuit in Justice Court against Plaintiff. Actions by the Dial Defendants was in furtherance of conspiracy to deprive the Plaintiff her residence and to cause her injury and harm.

133. In regards to the actions rendered the Plaintiff on February 14, 2006, Plaintiff is ignorant of the true names and capacities of Defendants sued as John Does 1-5 and John Doe 6; however acknowledge the role they carried out in the conspiracy and in the aiding of deprivation of Plaintiff's rights. Therefore, sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained.

134. Dial Defendants, acted without probable cause in bringing the above mentioned action, in that Defendants did not honestly and reasonably believe that there were valid grounds for the action, in that:

a. There was no merit and/or probable cause to the Justice Court action;
b. They could prove no entitlement to the claims asserted under any set of facts or laws;
c. The could prove not entitlement to the Plaintiff's residence or the money asserted; and
d. Knowingly, deliberately, willfully and maliciously went to great lengths to obstruct justice in conspiring with Lewis, Skinner and other co-conspirators to deprive the Plaintiff of rights secured under the laws.

135. On February 14, 2006, Dial Defendants proceeded to contact Lewis so that he would aid and assist them in the removal and eviction of Plaintiff. These Defendants did so with knowledge that such actions were illegal and/or unlawful; moreover, that neither the Hind County Justice Court nor Skinner had no personal jurisdiction over the Plaintiff.

136. By reason of Defendants' acts in instituting the above action against Plaintiff and causing Plaintiff's arrest, Plaintiff suffered injury to Plaintiff's reputation and credit, and by reason of Plaintiff's imprisonment, Plaintiff suffered extreme mental anguish, physical injuries, physical discomfort, all to Plaintiff's damage in the sum of $25,000,000.00.

137. Defendants acted maliciously and with intent to injure Plaintiff, and by reasons of Defendants' acts, Plaintiff is entitled to exemplary damages in the sum of $250,000.00.

WHEREFORE, Plaintiff request s judgment against Defendants for:

138. Compensatory in the amount of $150,000.00.

139. Punitive Damages in the amount of $25,000,000.00.

140. Reasonable attorney fees.

141. Costs of suit; and

142. Such other and further relief as the court deems just and proper.

COUNT TWO
ABUSE OF PROCESS
(Against Dial Defendants, Lewis and Skinner, John Does 1-6)

Plaintiff herein incorporates the Paragraphs 1 through 142 as if set forth in full herein. In support of her abuse of process claims the Plaintiff relies upon case laws governing said matter, some of which are attached hereto at **Exhibit "19"** and incorporated herein by reference; therefore states as follows:

143. While the Hinds County Justice Court may have issued the *Summons to Tenant* in good faith, the willful, illegal improper and perverted use of process by Dial Defendant and Defendant Lewis would be used to accomplish result outside its lawful scope.

144. Dial Defendants and Lewis having knowledge of the injury that would be rendered Plaintiff, resorted to a commonly used practice between them in depriving citizens, such as the Plaintiff, of equal protect of laws and due process of laws in the posting rather than the personal service as required under the Landlord and Tenant Act, laws of the state of Mississippi and United States Constitution and other laws governing sad matters.

145. The legal process in the Justice Court action was abused by Dial Defendants and Lewis primarily to accomplish a purpose for which the process was not designed. Thus, subjecting hese Defendants to liability for the harm and injury sustained by the Plaintiff for said unlawful and illegal acts.

146. The perverted use by Dial Defendants and Lewis of the legal process issued by the Justice Court was in done in furtherance of Dial Defendants conspiracy and to deprive the Plaintiff rights secured under the Constitution and other applicable laws governing said matters.

147. Dial Defendants resorted to the abuse of legal process and/or misuse thereof to achieve through said use of the Justice Court, in that which they knew said Court would be powerless to grant a ruling in their favor with the full facts and evidence surrounding their lawsuit lacked probable cause. Therefore, the Dial Defendants solicited the services of Lewis to aid them in furtherance of the conspiracy had on the Plaintiff, and deprive her rights.

148. Dial Defendants abuse of process was intended for the perversion of the process to accomplish the improper motive sought against the Plaintiff and to deprive her equal protection of the laws and due process of laws.

149. Dial Defendants obtained legal process under the authority of the Hinds County Justice Court for the purpose of perpetrating an injustice on the Plaintiff. Through said perversion said Defendants were able to ascertain the improper purpose sought – to deprive the Plaintiff her residence and rights secured under the Constitution, Landlord and Tenant Acts and other laws governing said matters.

150. Dial Defendants committed an illegal and wrongful act in commencing Hinds County Justice Court action without legal justification and them upon receipt of legal process, abused the process.

151. Dial Defendants relied upon the abuse of process to instigate and subject the Plaintiff to an unlawful and illegal arrest.

152. Dial Defendants' ulterior motive being: **a)** to unlawfully and illegally retrieve the residence from the Plaintiff in that they never wanted to lease her an apartment; **b)** they knew that Plaintiff refused to release her apartment and required that the make the necessary repairs as required in the lease agreement; **c)** they would not be able to get the Plaintiff to surrender her residence without resorting to unlawful and illegal acts clearly in violation of her rights; and **d)** to destroy and cover-up incriminating evidence which they knew the Plaintiff would use against them in a court of law.

153. Dial Defendants resorted to abuse of process to coerce and obtain collateral advantage to force the Plaintiff to surrender her residence, by using the judicial process as a threat and tool to extort rent money they knew they were not entitled to or to obtain the Plaintiff's residence.

154. Acting with the express authorization and approval of Dial Defendants, Defendants Lewis, John Does 1-5, and John Doe 6 conspired with Dial Defendants and willfully,

maliciously, unlawfully and illegally entered the Plaintiff's residence in order to evict and have her removed after ***having failed*** to obtain a legally and lawfully binding judgment under the laws of the state of Mississippi, Constitution and other applicable laws.

155. Neither Defendant Lewis, John Doe 6, nor Hinds County Justice Court and/or Skinner had jurisdiction over the Plaintiff in that service of process in Spring Lake's action was not perfected and not processed in accordance with the laws governing said matters. Thus, depriving the Plaintiff equal protection of the laws and due process of laws. Rights secured under the Constitution and other laws governing said matter.

156. Dial Defendants, Lewis, John Does 1-5, and John Doe 6 entering the Plaintiff's residence by unlawful, illegal and non-peaceful means. Access to the Plaintiff's residence was obtained as a result of the abuse of process and use of an unlawful and illegal Warrant of Removal initiated by Dial Defendants – all of which instruments, as a matter of law, were unenforceable.

157. Prior to Dial Defendants authorizing the unlawful and illegal entry to Plaintiff's residence they were timely, properly and duly notified that Plaintiff would be seeking to get an injunction and restraining order. Upon such news, with willful, malicious and wanton acts Dial Defendants moved swiftly, deliberate and with ill motive to contact Defendant Lewis and his aid John Doe 6, seeking assistance from them to aid in the unlawful and illegal eviction and removal of Plaintiff and her property from her residence.

158. The malicious and wrongful acts of Defendants caused Plaintiff great physical inconvenience and discomfort, mental suffering, embarrassment, humiliation, distress and more to Plaintiff's loss and damage in the sum of $500,000.00.

159. Under Mississippi law the laws are clear that on how service of process on tenants who live in a multi-family dwelling is to be had:

160. Defendant Lewis in the handling of process in the Justice Court action, failed to comply with statutes/laws governing said matters and then provided a false return as well. Said acts of Lewis was willful, malicious and wanton.

161. If service is accomplished by any other means prohibited by law, process is void and both the Justice Court/Skinner and Lewis had no jurisdiction. Therefore, any actions taken upon such **null** and **void** process is an abuse and exceeds the authority vested in these Defendants in their official capacity.

162. Dial Defendants knew and/or should have known from Plaintiff's notification of the insufficiency of service of process and subsequent pleadings that they were not entitled to the Plaintiff's residence. Nevertheless, in furtherance of their conspiracy, they deliberately with malice and improper motive with intent to unlawfully and illegally obtain the Plaintiff's residence engaged the acts of Lewis, Skinner and John Does 1-5, and John Doe 6.

163. Notwithstanding the timely notification, Dial Defendants failed to correct service of process in a manner in compliance with the laws governing said matters. Instead, they elected to conspire and interfere with the rights of Plaintiff through obstructing justice.

164. On February 14, 2006, Dial Defendants awaited the news of Plaintiff's departure from her residence to contact Lewis and John Doe 6.

165. On February 14, 2006, Plaintiff upon returning to her residence after filing her Injunction and Restraining Order in the Courts, found Dial Defendants, Lewis, John Does 1-5, and John Doe 6 illegally and unlawfully and without probable cause in her apartment removing her property and/or possessions.

166. Defendants doing so with knowledge that Plaintiff would be seeking an injunction and restraining order against them.

167. Whether any pleadings by the Plaintiff were filed in the correct and/or incorrect court, the fact remains that Dial Defendants were acting in violation of the laws, and on a **null** and **void** judgment that could not be executed and/or upheld. Moreover, they were provided with more than adequate case laws and evidence prior to the filing of their Justice Court action and throughout that action to support that they were acting with ill and improper motive . Thus supporting Dial Defendants and co-conspirators clearly and blatantly had no regards for the Plaintiffs rights.

168. Plaintiff was never indebted to the Dial Defendants and neither is there any evidence to support the allegations by the Dial Defendants that Plaintiff was indebted to them.

169. Plaintiff was never indebted to Defendants in any sum whatever under the laws governing Landlord and Tenant matters or the Lease Agreement, which was well known to the Dial Defendants. The acts of Dial Defendants in instituting a suit in Justice Court against Plaintiff, with knowledge they were not entitled to the claims asserted, willfully, maliciously and fraudulently carried on their suit to obtain a non-binding judgment.

170. Dial Defendants' failure to comply with the laws, caused an illegal and/or unlawful *Warrant for Removal* to be executed (however not issued by the Justice), but nevertheless posted (in violation of the laws) on Plaintiff's residence.

171. By reasons of the above acts, moreover, Defendants acted maliciously and with the intent, design and purpose to injure Plaintiff in her good name and reputation.

172. On January 27, 2006, in Hinds County, Mississippi, Dial Defendants went before Hinds County Justice Court in and for that county, and falsely and maliciously, and without any

reasonable or probable cause, caused and procured said court to issue a *Summons to Tenant* against the Plaintiff, and in favor of Dial Defendants. A copy of said summons is attached hereto as **Exhibit "16,"** and incorporated herein by reference.

173. Dial Defendants had Lewis post the *Summons to Tenant* at the residence of Plaintiff, and, without any reasonable or probable cause whatever not to personally serve the Plaintiff, caused and procured the posting of *Summons to Tenant* which said method was in violation of the laws governing said matters and deprived the Plaintiff equal protection of the laws and due process of laws secured under the Constitution and other applicable laws governing said matters.

174. Defendant Lewis failed to file the required *Proof of Service* required by law in that he knew that service of process was not perfected in accordance with the laws; moreover, that he and Dial Defendants were committing a *criminal* act. Nevertheless, determined to fulfill his part of the conspiratorial acts, he falsified information regarding process in that he clearly and blatantly had no regards for the rights of Plaintiff and knowing that he could *rely* on Skinner to aid him in such illegal and unlawful practices. Moreover, although the law requires Lewis' presence in Justice Court hearings, Skinner simply allows Lewis to evade the law and not attend court sessions.

175. On January 27, 2006, Dial Defendants, without reasonable or probable cause and through false testimony, procured the judge to give and enter in the justice court's docket a judgment in favor for Spring Lake, and against Plaintiff, for the sum of $379.50 in damages and $54.00 in costs, knowing and/or should have known the judge had no jurisdiction of the cause so pending.

176. Dial Defendants, subsequently on February 6, 2006, by false representation with clear and malicious intent, caused Skinner to make and issue a Warrant of Removal, duly executed by the judge. Dial Defendants caused Skinner to execute a Warrant of Removal directed "To Any Lawful Officer of Hinds County, "and approximately seven (7) day later posted said Warrant at Plaintiff's residence. A copy of said Warrant is attached hereto as **Exhibit "20"** and incorporated herein by reference.

177. Subsequently on February 14, 2006, Dial Defendants caused the Constable Lewis, John Does 1-5 and John Doe 6, to proceed to unlawfully and illegally force the Plaintiff from her residence place the Plaintiff under arrest..

178. In perpetrating the above acts, these Defendants acted maliciously and wrongfully, unlawfully, illegally and with the intent, design and purpose to injure the Plaintiff in Plaintiff's good name and reputation.

179. At any given time during their Hinds County Justice Court action, the Dial Defendants could have withdrawn their lawsuit. Nothing precluded them from doing so.

180. On February 14, 2006, Plaintiff was legally and lawfully in possession of her residence located at 1434 Hawthorne Cove in Jackson, Mississippi and lawfully possessed the personal property contained therein.

181. Plaintiff rented the residence from Defendant Spring Lake for $645.00 per month and the rental contract was in full force and effect at all times mentioned.

182. On the day in question, February 14, 2006, Plaintiff's rent was fully paid up except for the amount permissibly withheld as a matter of law under the Landlord and Tenant Act and other laws governing said matters..

183. On February 14, 2006, Dial Defendants, Lewis and John Does 1-5, and John Doe 6 unlawfully, illegally and forcibly entered the Plaintiff's residence, and evicted Plaintiff from the possession, use and occupation of the residence.

184. At some time prior, Dial Defendants maliciously sued out and caused Summons to Tenant to issue against Plaintiff, falsely and maliciously swearing in connection to the complaint in their Justice Court action that Plaintiff was indebted to Defendants in the sum of $379.50 for past due and unpaid rent. Dial Defendants thus later obtained a distress warrant executed by Skinner. Dial Defendants knew they could rely upon Skinner's allegiance to them, the cause and object of conspiracy – the Plaintiff and depriving her of her residence and rights secured under the Landlord and Tenant Act, Civil Rights Act, Constitution and other applicable laws governing said matters. With Skinner, a Justice Court Judge, in their alliance, Dial Defendants knew they could count on him to aid and allow them to accomplish their goal against the Plaintiff.

185. Dial Defendant's representative Crews and coconspirators, Lewis, John Does 1-5, and John Doe 6, by virtue of the warrant, wrongfully and maliciously entered the premises and seized and/or contributed to said seizure of Plaintiff's personal property and personal effects on the premises, invaded her privacy and discarded Plaintiff's property on the grass/lawn and/or street of apartment community.

186. On February 14, 2006, Dial Defendant's representative, Crews, was present when illegal and unlawful entry and seizure of Plaintiff's residence occurred and in fact was the person who authorized and directed with the assistance of Lewis such wrongful and malicious levy, eviction and ejection of Plaintiff's property and personal effects.

187. Dial Defendants, Lewis and Skinner had actual knowledge that Plaintiff owed Dial Defendants no rent whatever when Dial Defendants secured the distress warrant. Dial Defendants from the beginning when swearing out their complaint filed in the Hinds County Justice Court was not to collect rent from Plaintiff, but used such process in furtherance of the conspiracy and illegal motive to deprive the Plaintiff of her residence and clearly disregard any rights the Plaintiff repeatedly advised them she was entitled to and exercising under such circumstances. Dial Defendants intended to accomplish and did accomplish the object pursued of their conspiracy – the eviction of Plaintiff from the premises, destroying evidence, and deprivation of her residence and rights secured under the Constitution. Thus, constituting an abuse of process in that the distress warrant was used for a purpose than that for which it was lawfully intended to be used for.

188. None of Plaintiff's personal property that was stolen has been recovered by, or restored to, Plaintiff. Said property is still being held by Dial Defendants, their employees other residents and/or visitors said Defendants allowed to take and/or steal such items. This Plaintiff has sought and will continue to seek recovery of the property by replevy bond and/or replevin.

189. At the time and place referred to above, Dial Defendants caused the unlawful, wrongful and illegal seizure from the Plaintiff's residence all of her property and possessions. Dial Defendants could foresee the additional distress and unduly burdensome acts they were placing on the Plaintiff. With knowledge that if Plaintiff were to bring legal action against them, they would attempt to assert to place further burdens on the Plaintiff to have to relive the horrendous ordeal and subject her to grueling and burdensome act of having to go through what was left of her property in an effort to estimate damages. Such actions by the Dial Defendants

was calculated with willful and malicious intent and with knowledge that even with the Plaintiff out of their residence, their intent to continue to attempt to inflict further injury upon her.

190. In perpetrating the above acts, these Defendants acted maliciously and wrongfully and with the intent, design, and purpose to injure Plaintiff.

191. Dial Defendants act in filing their Justice Court complaint and seeking out the distress warrant and causing it to be executed/levied was done maliciously and without probable cause.

192. At the time the distress warrant was executed and the property of Plaintiff levied on, Dial Defendants knew that Plaintiff did not owe any money to Dial Defendants, and that the distress warrant was not acted upon for the purposes of accomplishing the object pursued and that was depriving the Plaintiff of her residence and rights secured under the Landlord and Tenant Act, Civil Rights Act, Constitution and other applicable laws governing said matters.

193. By reason of the swearing out of the distress warrant, and the seizure and levy of the property, Plaintiff was compelled to employ an attorney to aid in securing the return and control of her residence, and in which is presently underway. Legal services in which the Plaintiff has expensed well over $5,000.00 and continues to incur costs associated with litigation. Attorney's fees are recoverable under the applicable laws governing said matters.

194. Dial Defendants through their representatives contacted Plaintiff's employer with improper and ill motive notifying said employer of the lawsuit filed by the Plaintiff against them for the purpose of having the Plaintiff terminated from her employment. Dial Defendants doing so in furtherance of the conspiracy to cause the Plaintiff injury and clearly in disregard for her rights secured under the Constitution and other applicable laws prohibiting such unlawful and illegal action.

195. The Constitution and other applicable laws are clear that such conspiracy in causing damage and injury to a citizen, such as Plaintiff, for engaging and/or participating in lawsuit is prohibited by law. Nevertheless, the Dial Defendants again succeeded in accomplishing the object pursued – Plaintiff's loss in employment. Another *overt* and malicious act by the Dial Defendants which Plaintiff as a matter of law will be able to seek damages for and intend to do so.

196. Plaintiff was put to the expense of having to retain a storage unit to store the property and preserve same for litigation purposes, of items left and currently suffers from expense of approximately $84.00 per month.

197. A reasonable person and/or mind may conclude that there were other means available to the Dial Defendants – i.e. changing locks of Plaintiff's apartment until the issue could be resolved; instead said Defendants with total and clear disregard to the rights of Plaintiff never wanted the Plaintiff in their apartment community and would stop at nothing to accomplishing to have her removed at all cost even if it were illegal and criminal, the Dial Defendants were not going to let anything stop them. Dial Defendants were confident they could count on their ties to attorney and judges to aid them in accomplishing their illegal and unlawful acts against the Plaintiff. In the end accomplishing the goal and/or object pursued – having Plaintiff removed and deprived of her residence. Actions in violation of rights and privileges secured under the Constitution and other governing laws.

198. The abuse of process by Dial Defendants and Lewis was done with malice, forethought, harassment, discrimination, retaliation and improper motive to all this Court to grant punitive damages.

199. Upon Plaintiff's arrival to the Hinds County Detention Center, its officials acknowledged that her property would be placed on out on the street and stolen; however, did nothing to prevent such theft or secure the Plaintiff's property, instead insisted on detaining the Plaintiff. Such acts which contributed to additional harm, damage and injury to the Plaintiff and her property.

200. As a direct and proximate result of said acts, Plaintiff was injured and deprived and deprived of rights secured under the Constitution and other laws governing said matters.

WHEREFORE, Plaintiff request judgment of and against Defendants for:

201. Compensatory in the amount of $400,000.00.

202. Punitive Damages in the amount of $50,000,000.00.

203. Reasonable attorney fees.

204. Costs of suit; and

205. Such other and further relief as the court deems just and proper.

COUNT THREE
CIVIL ACTION FOR DEPRIVATION OF RIGHTS
(Against all Defendants)

Plaintiff herein incorporates Paragraphs 1 through 205 of this pleading, as if set forth in full herein. In support of her claims of deprivation of rights, the Plaintiff relies upon case laws governing said matter, some of which are attached hereto at **Exhibit "21"** and incorporated herein by reference; therefore states as follows:

206. **Tacit Agreement** - Occurs when two or more persons pursue by their acts the same object by the same means. One person performing one part and the other another part, so that upon completion they have obtained the object pursued. Regardless whether each person

knew of the details or what part each was to perform, the end results being they obtained the object pursued. Agreement is implied or inferred from actions or statements.

207. Defendants directly and indirectly conspired to deprive the Plaintiff of her rights. Although the Defendants were repeatedly notified of violation and deprivation of rights of Plaintiff, they knowingly, willfully and deliberately with intentional purposes elected to perform and/or perfect their part in the conspiracy to deprive her rights secured under the Constitution, Landlord and Tenant Acts, Civil Rights and other governing laws.

208. The acts of the Defendants were done under color of state law.

209. Private individuals such as Dial Defendants conspired with Defendants Lewis, Skinner under color of state law as specifically set forth in this Complaint to deprive the Plaintiff rights secured under the Civil Rights Act, Constitution and other laws governing said matters.

210. Liability may be had on Hinds County of Mississippi for the unconstitutional acts of their representative/employee Lewis. Defendants Lewis, in that the service of process of *Summons to Tenant*, failed to abide by the laws governing service, which caused the Plaintiff to be subjected to deprivation civil rights and Constitutionally rights protected rights under the 14th Amendment to the United States Constitution, and other state and federal laws governing said matters.

Burden of Proof:

211. The Dial Defendants conspired with Defendant Lewis and Skinner and, through said conspiracy, reached an understanding either directly or indirectly to deprive the Plaintiff of her constitutional rights. As early as August 2005, Dial Defendants conspired and knew that their acts were in violation of the Plaintiff and were rights secured under the Constitution. Nevertheless, Dial Defendants surged on and solicited the acts of co-conspirators.

212. The Dial Defendants, Lewis and Skinner were willful participants in the joint conspiracy and acted in concert to produce the actual abridgement of Plaintiff's federally secured rights protected by the guides of the United States Constitution.

213. Defendants named in this lawsuit were timely and adequately placed on notice that their actions were illegal and/or unlawful; moreover in violation of rights secured and protected under the Constitution and other governing laws. To no avail. These Defendants surged on with zest and great zeal, and getting great joy from causing the Plaintiff injury and harm.

214. The Plaintiff believes that the unlawful and illegal actions of Dial Defendants, Lewis and Skinner was racially motivated. Said Defendants of all who are white, and Plaintiff who is an African-American. While the remaining Defendants may not have known of the conspiracy and racially motivated acts of Dial Defendants, Lewis and Skinner, by subjecting the Plaintiff to the unlawful and illegal acts which deprived her of protected rights (even after being notified of violations) support they may all be held liable for the damages and/or injuries sustained by the Plaintiff as a direct and proximate result for the part in which they played and/or carried out.

215. The actions of the Defendants in this lawsuit were willful, malicious and wanton. Defendants acts were done with purposeful, deliberate and blatant disregard to the rights of the Plaintiff.

COUNT FOUR
CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS
(All Defendants)

Plaintiff herein incorporates the Paragraphs 1 through 214 as if set forth in full herein. In support of her claims of conspiracy to interfere with civil rights, the Plaintiff relies upon case

laws governing said matter, some of which are attached hereto at **Exhibit "22"** and incorporated herein by reference; therefore states as follows:

216. **Tacit Agreement** - Occurs when two or more persons pursue by their acts the same object by the same means. One person performing one part and the other another part, so that upon completion they have obtained the object pursued. Regardless whether each person knew of the details or what part each was to perform, the end results being they obtained the object pursued. Agreement is implied or inferred from actions or statements.

217. Beginning as early as August 2005, and continuing to date, the above named Dial Defendants conspired with others, whose names of all co-conspirators are presently unknown to Plaintiff; however, conspired to associate for the purposes of depriving and interfering with the rights of Plaintiff secured under the Constitution, Civil Rights Act, Landlord and Tenant Act and other applicable laws governing said matters. Moreover, specifically in depriving Plaintiff of her residence located at 1434 Hawthorne Cove in Jackson, Mississippi. As part of said conspiracy, it was agreed (directly or indirectly) by and between the Dial Defendants, Lewis and Skinner, in the conduct of their respective offices, they would aid the Dial Defendants in said conspiracy wherein the object pursued was the Plaintiff and depriving her of her residence and rights secured under the Constitution, Civil Rights Act, Landlord and Tenant Acts and other applicable laws governing said matters. Thus, in pursuit of these conspirators' purposes, they through willful, malicious and wanton behavior committed *criminal acts*. As a further part of the conspiracy it was agreed (whether verbally, explicitly or simply through implied and/or inferred acts) by and between Dial Defendants, that Defendants Lewis and Skinner, in the conduct of his respective offices, would aid Dial Defendants in the threats, harassment and other illegal conduct to arrange and cause economic harm to the Plaintiff.

218. In doing the acts alleged, each of the above Defendants acted as the agent for and on behalf of the other Defendants, and was acting at all times material, within the scope of their respective agencies and in furtherance of the above described conspiracy and discriminatory practices.

219. At some point prior to or before January 23, 2006, and in furtherance of the above-described conspiracy, Dial Defendants solicited Defendant Lewis to engage in unlawful and illegal acts against the Plaintiff to interfere with her civil rights, Constitutional rights and other rights secured under the laws for through the obstruction of justice.

220. At some point prior to or before January 30, 2006, and in furtherance of the above-described conspiracy, Dial Defendants solicited Defendant Skinner to engage in unlawful and illegal acts against the Plaintiff to interfere with her civil rights, Constitutional rights and other rights secured under the laws through the obstruction of justice.

221. At some point prior to or before February 15, 2006, and in furtherance of the above-described conspiracy, Dial Defendants and Lewis solicited Defendant John Doe 6 to engage in unlawful and illegal acts against the Plaintiff to interfere with her civil rights, Constitutional rights and other rights secured under the laws through the obstruction of justice.

222. At some point prior to or before January 15, 2006, and in furtherance of the above-described conspiracy, Dial Defendants solicited Defendants John Does 1-5 to engage in unlawful and illegal acts against the Plaintiff to interfere with her civil rights, Constitutional rights and other rights secured under the laws for through the obstruction of justice.

223. At some point prior to or before February 15, 2006, and in furtherance of the above-described conspiracy, Defendant Lewis solicited Defendant John Doe 6 to engage in

unlawful and illegal acts against the Plaintiff to interfere with her civil rights, Constitutional rights and other rights secured under the laws through the obstruction of justice.

224. At some point prior to or before February 15, 2006, and in furtherance of the above-described conspiracy, Defendant Lewis solicited Defendants John Does 7-26 and Jane Does 2-26 to engage in unlawful and illegal acts against the Plaintiff to interfere with her civil rights, Constitutional rights and other rights secured under the laws through the obstruction of justice.

225. At some point prior to or before January 23, 2006, and in furtherance of the above-described conspiracy, Defendant Lewis as an employee and/or representative of Hind County, Mississippi solicited said County to engage in unlawful and illegal acts against the Plaintiff to interfere with her civil rights, Constitutional rights and other rights secured under the laws through the obstruction of justice.

226. At some point prior to or before January 23, 2006, and in furtherance of the above-described conspiracy, Defendant Lewis solicited Defendant McMillin to engage in unlawful and illegal acts against the Plaintiff to interfere with her civil rights, Constitutional rights and other rights secured under the laws through the obstruction of justice.

227. In doing the acts described above, Defendants attempted to impede, hinder, obstruct or defeat the due course of justice in the State of Mississippi, County of Hinds, with the intent to injure Plaintiff and to deny Plaintiff the right of equal protection of the laws, within the meaning of 42 U.S.C.A. § 1985(2) and 42 U.S.C.A. § 1985(3).

As a direct and proximate result of the above-described unlawful conduct of Defendants, Plaintiff was unlawfully and illegally removed and deprived her residence, arrested, incarcerated, required to miss work and ultimately terminated from her place of employment.

228. The conduct alleged was engaged in under color of state law, and that such conduct subjected plaintiff to the deprivation of rights, privileges, and immunities secured by the Federal Constitution and laws, where Complaint is based on 42 U.S.C.A. § 1983.

229. Defendants conspired to interfere, in the manner proscribed by the statute, with the civil rights of Plaintiff; and an overt act done in furtherance of the object of the conspiracy, whereby Plaintiff is injured or is deprived of any right or privilege as a citizen of the United States; pursuant to 42 U.S.C.A. § 1985(3).

230. Defendant Malcolm McMillin at all times material to this Complaint, was the duly appointed Sheriff of Hinds County, Mississippi and, by virtue of his position, his edicts or acts may fairly be said to represent the official policy of the Hinds County Sheriff's Office.

231. Plaintiff sues each and all Defendants who are employees of Hinds County in both their individual and official capacities.

232. At all times material, Defendants Lewis, Skinner, McMillin, John Does 7-26 and Jane Does 2-26 acted under color and by virtue of the statutes, customs, ordinances and usages of the State of Mississippi, County of Hinds and the Hinds County Sheriff's Office.

233. Defendants Lewis, Skinner, McMillin, John Does 6-26 and Jane Does 2-26 at all times material to this Complaint, were the servants, agents, appointees, and employees of Defendant County, acting in furtherance and within the scope of said relationships and said County is answerable at law for the acts of these Defendants under the federal and Mississippi case law and Statutes.

234. The acts of Defendants Lewis and John Doe 6 herein alleged were committed either on the instruction of Skinner or of one having authority to deter, prevent or fail to prevent wrongful acts, or with the knowledge and consent of Skinner, or were thereafter approved and

ratified by Skinner. By virtue of Skinner's position as Justice Court Judge, the acts and conduct of Lewis and County Defendants alleged represents the official policies and practices condoned by Hinds County.

235. While Plaintiff filed a formal Complaint against Lewis with the Hinds County Board of Supervisors, said Board clearly ignored said claims and/or to date has elected not to handle complaint and provide the Plaintiff with their findings. Thus, in furtherance of conspiracy and efforts of depriving the Plaintiff equal protection of the laws and due process of laws, rights secured by the Constitution of the United States and other applicable laws governing said matters.

236. The acts of Defendant Lewis, John Doe 6 and County Defendants herein alleged were committed either on the instruction of McMillin, or with the knowledge and consent of McMillin, or were thereafter approved and ratified by McMillin. By virtue of McMillin's position as Sheriff of Hinds County, the acts and conduct of Lewis, John Doe 6 and County Defendants alleged represent the official policy of the Hinds County Sheriff's Office.

237. Plaintiff for years enjoyed her excellent reputation in Hinds County as a private citizen and at all times relevant to this action was employed by a law firm.

238. Defendants Lewis and John Doe 6 transported Plaintiff to the Hinds County Detention Center and subjected the Plaintiff to body search, removal of personal effects, imprisonment in a locked cell, fingerprinted and photographed.

239. The Plaintiff had at no time committed any act in the presence of Defendants, or any one of them, which constituted either a felony, misdemeanor, or violation of any State statutes, nor was there in existence any reasonable or probable cause to believe that a felony or misdemeanor had been committed or that the Plaintiff had committed same. Further, there was

not in existence at this time any legal and/or lawful warrant calling for the arrest or imprisonment of Plaintiff.

240. At all times material, certain Defendants were aware that Plaintiff had substantial family ties in Hinds County, Mississippi, that she had no criminal record, and that she had and would make herself continuously available for inquiries, investigations or any lawful proceedings, including court appearances.

241. County Defendants were aware that Plaintiff was employed at a law firm, that she had repeatedly advised them that they were in infringing upon and/or in violation of her rights.

242. To date, no formal criminal charges have been brought against the Plaintiff as a result of the February 14, 2006 arrest.

243. With willful and malicious intent, Defendant Lewis, as a result of the alleged conspiracy was to cause the Plaintiff further injury and harm in total disregard of her rights, by having her removed, arrested and confined to a jail cell.

244. Defendants McMillin and Hinds County acting through Defendant Lewis, as mentioned above, neglected and failed to protect the personal property of the Plaintiff in any manner whatsoever, so such negligence to assure proper supervision and training in the handling of process, and matters assigned in the performance of duties, acting through Lewis, left the attached property lying in an open area outdoors without a guard or protection, subject to theft vandalism and the elements, and made no return of the attachment. Said Defendants further neglected and failed to take proper and necessary steps to hold Plaintiff harmless from loss of perishable property so attached. As a result, some of the property was stolen, damaged and destroyed.

245. McMillin's and Count's failure to supervise, train and/or see that Lewis, John Does 6-26 and Jane Does 2-26 were trained, educated on such matters involving the Plaintiff, was a direct and proximate result of the injuries and damage rendered her.

COUNT FIVE
ACTION FOR NEGLECT TO PREVENT
(Against Skinner, McMillin and County)

Plaintiff herein incorporates the Paragraphs 1 through 244 as if set forth in full herein. In support of her claims for neglect to prevent, the Plaintiff relies upon case laws governing said matter, some of which are attached hereto at **Exhibit "23"** and incorporated herein by reference; therefore states as follows::

246. Defendants Skinner as early as January 2006, had knowledge of the wrong, illegal and unlawful acts complained of herein regarding the handling of legal process in the Justice Court matter; however, did nothing to deter or prevent such actions. Even upon notification of said injustice did nothing to correct the wrongs complained of; instead, made a conscious, willful and deliberate decision to allow such practices to continue.

247. Defendant Skinner as early as February 2006, in the execution of Warrant of Removal, had knowledge that the acts of the Dial Defendants and Lewis were unlawful, illegal and infringed upon the rights of the Plaintiff; however, made a conscious, willful and deliberate decision to execute said warrant with knowledge that his actions violated the rights of the Plaintiff.

248. Defendant Skinner having the power to prevent or aid in preventing the commission of such illegal and unlawful acts rendered the Plaintiff, neglected or refused to do so, of such wrongful and illegal acts committed, shall be liable to the Plaintiff; or her legal

representatives, for damages caused by such wrongful act, which he by reasonable diligence could have prevented.

COUNT SIX
UNLAWFUL ARREST/FALSE IMPRISONMENT
(Against Dial Defendants, Lewis, Skinner, John Does 6-26, Jane Does 2-26, McMillin and Hinds County)

Plaintiff herein incorporates the Paragraphs 1 through 247 as if set forth in full herein. In support of her claims of unlawful arrest and/or false imprisonment, the Plaintiff relies upon case laws governing said matter, some of which are attached hereto at **Exhibit "24"** and incorporated herein by reference; therefore states as follows:

249. On February 14, 2006, Defendant Lewis placed Plaintiff under arrest without an arrest warrant and/or arrest warrant being issued for her.

250. Prior to the arrest Plaintiff advised Defendant Lewis that his actions were unlawful and that he was in violation of her civil rights.

251. In response to Plaintiff's notification, Defendant Lewis, with the assistance of John Doe 6, retaliated, became very hostile, agitated and decided and proceeded to place Plaintiff under arrest without probable cause.

252. Defendant Lewis placed Plaintiff's arms behind her back against her will and handcuffed her.

253. Defendant Lewis then instructed Dial Defendants and John Does 1-5 to continue on with the remove of Plaintiff's property.

254. Defendant Lewis is a Constable and employee Hinds County, located in the State of Mississippi; and also a resident of Hinds County, Mississippi.

255. Defendant John Doe 6 was the person who assisted Lewis with the February 14, 2006 arrest; and is a resident of Hinds County, Mississippi.

256. Each of the acts of Defendants alleged in this Complaint were done by Defendants under the color and pretense of the statutes, regulations, customs and usages of the County of Hinds, the State of Mississippi, and within the authority of their office as employees and representatives for Hinds County, Mississippi. However, because lack of jurisdiction existed as well as no legal and binding authority over the Plaintiff can be found, said Defendants may be held liable for the injury, damages and harm caused to Plaintiff.

257. Plaintiff provided Defendant Lewis with a copy of the "Injunction and Restraining Order" she had filed in the Courts. A copy of said pleading was filed in the Justice Court. Copy of which is attached hereto as **Exhibit "25"** and incorporated herein by reference.

258. While the law is clear that Plaintiff should have never had to even file any of the pleadings submitted in the Justice Court action and subsequent pleadings to prevent the unlawful and illegal evict and removal of herself and property, the record evidence will support that the Plaintiff did as much as she could to place the Defendants on notice of that the acts committed against her were unlawful and/or illegal. Acts outlawed many years ago.

259. On the morning of February 14, 2006, Plaintiff had notified Dial Defendants via facsimile that she was in receipt of Warrant of Removal posted at her and she would be seeking to obtain an Injunction and Restraining Order. A copy of which is attached hereto as **Exhibit "12"** and incorporated herein by reference.

260. As a matter of law, the Plaintiff had a right to her residence and the full enjoyment of same.

261. As a matter of law, the Dial Defendants nor any of the Defendants in this action had a right to remove or have removed the Plaintiff or her property/possession.

262. Defendant Lewis made a call to John Doe 7 or Jane Doe to determine whether or not the Injunction and Restraining Order was enforceable. Had Lewis used the same precaution, and contacted someone with experience and knowledge of laws and rights of citizens (such as Plaintiff), his handling of process and action upon warrant, Plaintiff believes a reasonable mind may conclude the outcome would have been different.

263. While Defendant Lewis inquired as to how the Injunction and Restraining Order, in whether, he failed to do the same in his handling of summons and warrant executed by the Justice Court.

264. Plaintiff *repeatedly* requested Dial Defendants, Defendants Lewis, John Does 1-5, and John Doe 6 leave her residence and advised them that their acts were in violation of her rights. To no avail.

265. The Plaintiff was illegally removed from her residence, searched, handcuffed, arrested, taken to the Hinds County Detention and booked.

266. The Plaintiff has a right to be free from illegal seizure of Plaintiff's person and property and a right to be free from unlawful arrest, detention and imprisonment, the rights secured to Plaintiff by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States and by 42 U.S.C.A. § 1983.

267. The Sheriff of Hinds County, State of Mississippi, pursuant to written policy (either himself or through his employees/representatives), allows and conducts body and/or strip searches of all persons admitted to the Hinds County Detention Center, located at County Farm Road in Raymond, Mississippi. Such practice is unconstitutional under the Fourth and

Fourteenth Amendments to the United States Constitution unless there exists a reasonable suspicion that the person to be searched is concealing contraband or weapons. This lawsuit seeks to have Defendants' indiscriminate search policy declared unconstitutional and enjoined. This lawsuit also seeks compensatory damages for Plaintiff, a victim of this unconstitutional practice. This lawsuit also seeks compensatory and punitive damages from the individual Defendants for their unconscionable disregard of settled law.

268. Defendants Lewis, Skinner, John Does 7-26 and Jane Does 2-26, individually and in concert with others acted under pretense, color, and virtue of law and their official capacities, but such acts were illegal and each defendant, individually, and in concert with the others, acted willfully, knowingly, and with specific intent to deprive Plaintiff of her constitutional rights.

269. The Defendants at all times material, knew that there was a complete absence of probable cause against the Plaintiff with respect to charge(s) which had not been formally or informally brought against her or made known to her for which arrest was, but nonetheless proceeded to take her into custody rather than release her as requested of the Plaintiff.

270. The transportation of Plaintiff to, and the detention of Plaintiff, at the Hinds County Detention Center in Raymond, Mississippi, without probable cause and without an arrest warrant and/or cause for arrest constituted a seizure within the meaning of the Fourth Amendment and deprived Plaintiff of liberty. This seizure and deprivation of liberty were unreasonable and without due process of law, in violation of the Fourth and Fourteenth Amendments to the United States Constitution.

271. The violation of Plaintiff's Fourth and Fourteenth Amendment rights by Defendants, under color of state law, individually, and through their conspiracy with one another and Dial Defendants was not in accordance with the laws governing said matters of the State of

Mississippi, County of Hinds or the United States Constitution. These Defendants are liable to Plaintiff for the violation of her rights as is set in this Complaint and the laws governing said matters.

272. By reason of the illegal arrest of the Plaintiff and her unlawful detention and imprisonment, Plaintiff was required to and did employ legal counsel to represent her in the criminal acts rendered her as well has retained an counsel to represent her in action(s) which she has brought and/or may bring in proceedings to be heard before court and judge..

273. Plaintiff has incurred attorneys' fees as a result of the actions taken against her.

274. The conduct of Defendants deprived the Plaintiff of the following rights, privileges and immunities secured to her by the Constitution of the United States:

a) The right of Plaintiff to secure in her person and effects against unreasonable seizure, invasion of privacy under the Fourth and Fourteenth Amendments to the Constitution of the United States;

b) The right of Plaintiff to be informed of the nature and cause of the accusation against her, secured to her under the Sixth and Fourteenth Amendments to the Constitution of the United States; and

c) The right of Plaintiff not be deprived of life, liberty, or property without the due process of law, and the right to the equal protection of the laws, secured by the Fourteenth Amendment to the Constitution of the United States.

275. County Defendants insisted that the Plaintiff provide them with personal information, in which they were not entitled to in that the arrest and detention of Plaintiff was all illegal, unlawful and in violation of Plaintiff's civil rights and Constitutional rights and other applicable laws governing said matters.

276. Defendants knew and/or should have known that the unlawful and illegal detention of Plaintiff would result in theft of her property.

277. To date, no formal charge(s) arising out of the arrest of Plaintiff has been filed.

278. This action is to recover damages for misconduct or neglect due to Hinds County employees negligent acts in their official capacity in connection with the arrest and/or unlawful and illegal acts rendered Plaintiff resulting in her arrest, namely: a) unlawful entry and seizure, b) invasion of privacy, c) unlawful arrest and false imprisonment, d) unlawful searches, e) unlawful restraints which caused the plaintiff bodily injuries – lacerations, bruising and cutting off of blood supply, etc., f) failure to allow her to speak with McMillin, g) failure to abide, adhere and comply with the laws of the state of Mississippi, U.S. Constitution and other laws governing said matters, h) failure to maintain peace, i) deprivation of rights, and j) obstruction of justice.

279. Defendant Hinds County, is, and at all times mentioned was, a municipal corporation existing by virtue of the laws of Mississippi, Defendants, McMillin and Lewis is and at all times mentioned were, residents of Hinds County.

280. At all times mentioned, Defendant Lewis was acting as a constable for Defendant municipality.

281. Prior to leaving the Detention Center, the Plaintiff placed the County Defendants on notice that she would be bringing legal action as a result of said violations.

282. The acts of Defendants were performed knowingly, deliberately, intentionally, and maliciously, by reason of which Plaintiff is entitled to an award of punitive damages of $75,000,000.00.

283. As a direct and proximate result of these violations of Plaintiff's constitutional rights, she was made to suffer great emotional trauma, discomfort, harassment, humiliation, embarrassment, injuries sustained, was deprived of her liberty, her personal and professional

reputations were impaired, she lost her job, and she was forced to retain counsel to represent her in the criminal proceeding.

284. As a result of the foregoing, Plaintiff has been deprived of constitutional rights and liberty and has suffered and continues to suffer great mental anguish and emotional upset. She was held against her will in custody by Defendants (to be determined), under color of state law, and was not permitted to leave.

285. The conduct of Defendants was willful, wanton, malicious and one with an evil motive and intent and a reckless disregard for the rights and safety of the Plaintiff and therefore warrants the imposition of exemplary and punitive damages in the amount of $10,000,000.00.

286. As a further direct and proximate result of the violations of Plaintiff's constitutional rights, Plaintiff was required to employ and did employ attorney(s) to prosecute criminal and civil action. The Plaintiff has become obligated to pay said attorneys a reasonable fee for their services in connection with and in furtherance of this action arising out of the conduct of Defendants.

287. Defendant McMillin is now, and at all times mentioned was, the duly elected, qualified, and acting Sheriff of defendant Hinds County, in the State of Mississippi. At all times mentioned, said Defendant was employed by, and acting on behalf of, Defendant County, as its agent, servant, and employee.

288. The actions of Defendants John Does 6-26 and Jane Does 3-26, were committed at the direction of Lewis and/or McMillin, or with their knowledge and consent, or were afterward approved and ratified by the Defendants Lewis and/or McMillin.

289. Defendants entered into a conspiracy to maliciously, wantonly and unlawfully injure, oppress, threaten, and intimidate plaintiff.

290. Defendants John Does 6-26 and Jane Does 3-26, inclusive, are sued under fictitious names. Their names and capacities are unknown to the plaintiff. When their true names and capacities are ascertained, plaintiff will amend this complaint by inserting their true names and capacities. Plaintiff is informed and believes therefore alleges that each of the fictitiously named defendants is responsible in some manner for the occurrences alleged, and that plaintiff's damages as alleged were proximately caused by those defendants.

291. Plaintiff is informed and believes and therefore alleges that at all times mentioned each of the defendants, including all defendants sued under their fictitious names, was the agent and employee of each of the remaining defendants, and in doing the things alleged, was acting within the course and scope of that agency and employment.

292. As a proximate result of the negligent and careless acts of Defendants, Plaintiff was hurt and injured in her health, strength, and activity, sustaining injuries to her person, all which have caused, and continue to cause, plaintiff great mental, physical pain and suffering. As a result of these injuries, plaintiff has suffered general damages in an amount within the jurisdiction of this court, and to be proved at trial.

293. Plaintiff during such illegal and unlawful ordeal advised County Defendants that in order to endure such humiliating and unbearable conditions and torment, she had to reflect on how the Apostle Paul (in the Bible) would handle such situation. Plaintiff realizes that it was her Christian roots, faith, morals, belief and refusal to let the fight and struggle of legendary strong civil rights pioneers go in vain, that sustained her through such horrific ordeal.

294. Each of the defendants, individually and in concert with the others, acted under pretense and color of law and their official capacity, but such acts were beyond the scope of their jurisdiction and without authorization of law. Each Defendant individually and in concert with

the others, acted maliciously, wantonly, willfully, knowingly, and with the specific intent to deprive plaintiff of her rights to freedom from illegal searches and seizure of her person, papers, property and effects, and her rights to freedom from unlawful arrest, detention, and imprisonment, all of which rights are secured by plaintiff by the Fourth, Sixth and Fourteenth Amendment to the Constitution of the United States, and by 42 U.S.C.A. §§ 1983 and 1988.

295. Pursuant to 42 U.S.C.A. 1988, plaintiff is entitled to a reasonable allowance for attorney fees as a part of their costs.

296. As a direct and proximate result of the unlawful arrest and detention of Plaintiff by Defendants, and the deprivation by Defendants of Plaintiff's personal liberty and freedom, Plaintiff has suffered irreparably.

297. As a further direct and proximate result of Defendant's conduct, Plaintiff suffered injury to her good name and reputation throughout the city of Jackson, Hinds County and other areas. Moreover, Plaintiff's parent's good name and reputation has also been injured and/or harmed. Plaintiff's father who is a minister/preacher and Plaintiff's mother who is the wife of a minister/preacher and known throughout various Christian communities and/or churches.

298. Defendants Jane Does 3 and 4 made it known that they were aware that Plaintiff's father was a minister and then proceed to subject her to ridicule and mockery because she was being detained and/or incarcerated.

299. As a further direct and proximate result of Defendant's conduct, Plaintiff suffered physical injury to her body, harm, mental suffering, humiliation, embarrassment, irreparable injury and other damages.

300. Plaintiff's father, when Plaintiff was released to him and her mother, advised Jane Doe 4 that not once in his 70 something years had he ever had to come and get any of his

children out of jail. Plaintiff's father being hurt and embarrassed by the illegal and unlawful actions rendered the Plaintiff and concerned of the damage to his reputation as a minister.

301. Plaintiff's mother, who is a wife of a minister, and actively involved in the church community and events in Utica, Mississippi and other cities, also has been hurt and embarrassed as a direct and proximate result of the illegal and unlawful actions taken against her daughter.

302. Plaintiff who is a former athlete and has competed on the world-class level in the sport of Track & Field and ranking among this country top athletes, a Christian and never having a history of being arrested prior to the February 14, 2006 incident. Said illegal acts of the Defendants which has caused the Plaintiff irreparable harm and injury.

303. Defendant Lewis unlawfully arrested Plaintiff without a valid and/or lawful warrant or any other legal and binding process and took Plaintiff into custody, all of which was against the will of the Plaintiff.

304. Defendant Lewis without valid and/or legal/lawful warrant, judicial order, or other authority of law, wrongfully, unlawfully, without probable cause, and on the sole charge, then made and/or concocted of disorderly conduct, arrested Plaintiff and compelled her to accompany he and Defendant John Doe 6 to the Hinds County Detention Center in Raymond, Mississippi, and then and there wrongfully, illegally and unlawfully gave instructions to Defendants Jane Doe 3 and other County Defendants to detain and confine Plaintiff at the Hinds County Detention Center. Upon giving such instructions Lewis proceeded to leave the Plaintiff at the Hinds County Detention Center.

305. Defendants (either directly or indirectly) failed to protect the rights, health, safety, and well-being of Plaintiff while she was unlawfully confined. Defendants either directly or indirectly compelled and/or assisted in the confinement of Plaintiff and her being detained in an

unfit, unsafe, vile and filthy/dirty/unsanitized cell with exposing the Plaintiff to urine stains, bodily fluids and specimen from other persons unknown to the Plaintiff. To which damages as to the long-term effect such exposure to such conditions cannot be determine at this time.

306. By reason of the unfit, unsafe, vile and filthy condition of the jail cell where Defendants (either directly or indirectly) unlawfully and falsely imprisoned Plaintiff, causing the Plaintiff to come into contact with unhealthy and exposure to urine and other unidentified specimen and stains.

307. Plaintiff, during her imprisonment, was confined among and forced to associate with prostitutes, criminals, and various other persons in which the general public may find to be of ill repute. Jane Doe 4 using such exposure to such persons through threats in seeking the Plaintiff's signature of Release Papers.

308. Plaintiff was locked in and repeatedly put into solitary confinement, was not permitted to communicate with family, friends or an attorney. Plaintiff remained in such conditions until her parents having learned of the arrest and confinement of their daughter and came to the Detention Center to get her. Plaintiff's father was required to sign on surety on a bond for the appearance of Plaintiff before the Court. A copy of said document is attached hereto as **Exhibit "26"** and incorporated herein by reference.

309. Plaintiff retained an attorney to represent her in the in the criminal acts rendered against her.

310. To date, almost **one (1)** year to the date of her arrest on February 14, 2006, no formal charges have been filed against the Plaintiff. Neither has Lewis filed any charges against the Plaintiff.

311. Plaintiff is informed and believes that, and on the basis of such information and belief alleges, that while instigated by Dial Defendants, her arrest and confinement were made on request and authority of Skinner and Lewis, and Plaintiff is informed and believes, and on the basis of such information and belief alleges, that all of the Defendants in this action (either directly or indirectly) conspired together for the false and unlawful arrest and confinement of Plaintiff, and Plaintiff was unlawfully deprived of her liberty and confinement in the Hinds County Detention Center, in a wholly unlawful manner, and on a fictitious charge, which Plaintiff is informed and believes, and so avers, was known to be false and fictitious to all of the Defendants, and that she was confined without any legally and/or lawfully binding warrant being read or exhibited to her, and if any warrant ever existed, which this Plaintiff denies, no such warrant was in the hands of the arresting officer (not even to show cause why they were at her residence on February 14, 2006, seizing and removing her property), Defendant Lewis, who took Plaintiff into custody and delivered her to the Hinds County Detention Center and instructed officials to detain her, all of which was brought about by the unlawful conspiracy and connivance of Defendants, the Defendants well knowing that Plaintiff had committed no crime against the laws of the State of Mississippi or the City of Jackson.

312. At the time of Plaintiff's arrest, Plaintiff was acting in a quiet, peaceful, and law-abiding manner, and had not committed, nor was Plaintiff then committing, any offense.

313. While being detained certain County Defendants went through the personal belongings of the Plaintiff and found a phone number of a friend of Plaintiff and through such contact was able to ascertain information as to whose Plaintiff's parents were because Plaintiff would not provide them with such information in that they were not entitled to same as a matter of law and right to the Plaintiff's privacy. As a result of such search and illegal invasion,

Defendant's contact Plaintiff's friend who provided personal information, regarding the Plaintiff's parents. Upon Plaintiff's friend receiving the news of Plaintiff's incarceration, said friend became emotionally upset and disturbed from the news in that she knew, that based on the reputation of Plaintiff, something was not right. Said friend then proceeded to contact relatives of the Plaintiff out of concern to let them know where she was.

314. At no time during Plaintiff's arrest and/or imprisonment did Plaintiff resist or attempt to resist Defendants Lewis and John Doe 6, or attack or attempt to attack them, or either of them, or anyone else.

315. Plaintiff was in fear of her life and felt threatened and at all times believed that Defendants Lewis and John Doe 6 intended to cause her harm. Plaintiff believes such injuries and harm sustained by Defendants Lewis and Skinner was based on her race. Plaintiff making such concerns known to Lewis on the way to the Detention Center when Lewis advised the Plaintiff she was not an attorney. Plaintiff advised Lewis that was the second time she heard that, first from Skinner and then from him and concerns they were prejudice towards her because she is African-American and educated. Plaintiff informing Lewis that she graduated from one of the top African-American Universities in the country and that there have been too many people who have died for the rights in which they were violating.

316. Plaintiff, at the time of her arrest and on many occasions while she was imprisoned, repeatedly requested that Defendants inform her of the crime she was charged with having committed and for which she was so arrested and imprisoned; but Defendants refused and failed to give Plaintiff any information respecting the charge against her.

317. Defendant Lewis at the time of Plaintiff's arrest failed to inform her of any such charges and failed to read and/or convey to her, her rights.

318. Plaintiff while she was imprisoned repeatedly requested that Sheriff McMillin be contacted and that she be allowed to speak with him; however all such requests were ignored, scorned, mocked, and ridiculed for such request.

319. Plaintiff repeatedly notified County Defendants that she was being detained against her will and demanded to be released; moreover, that such detention was unlawful and illegal.

320. Plaintiff repeatedly demanded to be allowed to make a telephone call and advised Defendants that she worked for a law firm; however, was deprived this request to contact a lawyer.

321. During Plaintiff's imprisonment, she was threatened with being subjected to being medicated and sent to a mental hospital. Defendants (to be identified) brought a nurse and/or medical personnel to Plaintiff's cell to medicate her.

322. The arrest and imprisonment of Plaintiff became a matter of common notoriety among Plaintiff's friends and acquaintances and among the general public. County Defendant(s) (to be identified) making it known to the general public and to those in which the Plaintiff has contact in the church, that she was in jail and/or at the Hinds County Detention Center.

323. During the time of Plaintiff's unlawful arrest and unlawful/false imprisonment, Plaintiff's property was permitted to be removed from her residence and remain unprotected from theft, vandalism, and other acts; resulting in certain property being stolen, damaged and which has not been found and/or returned

324. Defendants knew from their acts that Plaintiff's property would be subjected to such criminal activities; however, failed to exercise due and diligent care in the protecting the property of Plaintiff.

325. By reason of the facts and circumstances set forth above, Plaintiff was deprived of her liberty and was made ill, subjected to ridicule, scorn, obscene and vulgar language and contempt by those knowing of her detention and was otherwise damaged and injured.

326. Within the time allowed, if required by statute, Plaintiff on or about August 11, 2006, presented and filed a verified claim against Defendant Lewis and placed Hinds County on notice of her intent to file legal actions against them arising out of the above-described circumstances.

327. The claim against Lewis was filed in accordance with any such laws and a response requested within 90 days. However, to date, Hinds County has knowingly, deliberately and intentionally elected to obstruct justice and deprived the Plaintiff of the right to be heard and receipt of any such findings of an investigation (if any) on the complaint filed.

328. The statutory period for the filing of this Complaint on the claim and cause of action has not expired.

329. Plaintiff, after being released, engaged the services of an attorney at law, duly admitted to practice before all the courts of the State of Mississippi, for the purpose of representing her in the matter pertaining to the arrest.

330. The arrest and imprisonment of Plaintiff was procured and caused by Defendants maliciously and without probable cause, Defendants well knowing that Plaintiff was guilty of no crime, misdemeanor or felony, and by reason of such false arrest and false imprisonment, Plaintiff suffered severe bodily and mental pain, humiliation, embarrassment, and other injuries and damages.

331. Dial Defendants, Lewis and Skinner had conspired to have the Plaintiff arrested, then their next plan and/or course of action was to have her appear before Skinner, where Skinner would find Plaintiff "guilty" and sentence her to serve time in jail/prison.

332. By reason of the facts and circumstances set forth above, Plaintiff was deprived of her liberty, has suffered great physical and mental pain and suffering, and has been damaged in Plaintiff's name, reputation, and character.

333. By reason of all the facts and circumstances set forth above, Plaintiff suffered severe mental and physical anguish and was greatly humiliated and shamed; and during the period of Plaintiff's incarceration.

WHEREFORE, for the above-described unlawful and illegal acts, Plaintiff requests judgment of and against Defendants, and each of them, in both their individual and official capacities, and seeks compensatory and punitive damages, attorneys' fees, costs, and interest and such other and further general and special relief as Plaintiff may be entitled.

334. Compensatory in the amount of $5,000,000.00.

335. Punitive Damages in the amount of $75,000,000.00.

336. Reasonable attorney fees.

337. Costs of suit; and

338. Such other and further relief as the court deems just and proper.

COUNT SEVEN
DURESS
(Against Defendants)

Plaintiff herein incorporates the Paragraphs 1 through 337 as if set forth in full herein. In support of her claims of unlawful arrest and/or false imprisonment, the Plaintiff relies upon case

laws governing said matter, some of which are attached hereto at **Exhibit "27"** and incorporated herein by reference; therefore states as follows:

339. On February 14, 2006, Plaintiff's physical condition was such that Plaintiff was unable to write her name on the document clearly, straight and/or legible.

340. Prior to and during the Plaintiff's incarceration she was handcuffed, shackled with chains around her ankles and wrist. Such restraints which caused lacerations, bruising and impaired the flow of blood supply. Although the Plaintiff notified of such discomfort, said notification was met with scorn and mockery and threats. Plaintiff repeatedly being threatened to be taken to the mental hospital.

341. Plaintiff's signature was obtained under duress in that she was repeatedly threatened yelled at, cursed at by certain Defendants (to be identified) who have yet to be identified. Plaintiff never did give or indicate consent to the terms of the document. Knowing of the Plaintiff's and unlawful detention, Defendant Jane Doe 4 kept demanding that the Plaintiff provide her signature on the Release Papers to the Defendant's satisfaction. However, due to such duress and burdensome acts, the Plaintiff could not do so. Plaintiff making known her objections to such practices and being forced to sign such document in order to obtain her release.

342. The Release Records of the Hinds County Detention Center was obtained from the Plaintiff by Defendants as a result of duress sufficient to deny Plaintiff the exercise of free will. On February 14, 2006, County Defendant(s) (to be identified), at Hinds County Detention Center, threatened Plaintiff with:

a. Being returned to her cell;
b. Being sent to mental hospital;
c. Staying in jail until signature is obtained;

d. Requesting that her parents leave in that Plaintiff was refusing to sign the document; and
e. Being put in with other criminals and subjected to harm and injury by them and more.

343. Fearful and apprehensive of the possible consequences of the act threatened by Defendants, Plaintiff under sever duress, pressure, dehydration and exhaustion, executed and delivered Release Papers solely as a result of Defendant Jane Doe 4's threats and hostile treatment toward her and for no other reason.

344. On February 14, 2006, Defendant Jane Doe 4 threatened Plaintiff with further imprisonment/incarceration if the Plaintiff refused to sign the Release Papers. This threat of further imprisonment/incarceration constituted duress.

345. On February 14, 2006, Plaintiff was deprived legal representation, denied phone calls, and other rights afforded her under the Constitution.

346. Plaintiff was not free to consult with advisors, attorneys, family, or friends.

347. The Release Papers were extorted from Plaintiff on February 14, 2006, in the Hinds County Detention Center located in Raymond, Mississippi. Defendants effected the extortion by threatening that if Plaintiff refused to sign said papers, Defendant would return her to her cell. Plaintiff fearing that Defendants' threats would be carried out, and for no other reason, executed the Release Papers under duress, sever stress, and exhaustion.

348. Defendant Jane Doe 4 in further efforts to obtain Plaintiff's signature, contacted the Plaintiff's parents were waiting for her in the lobby that they would not be releasing Plaintiff because of her refusal to sign the Release Papers.

349. On February 14, 2006, at Hinds County Detention Center, Plaintiff was imprisoned by Hinds County officials against her will and without lawful authority until, to obtain her relief, Plaintiff executed the Release Papers and subjected herself to being booked,

fingerprinted and photographed of which documents are in the possession of the Hinds County Detention Center.

350. The February 14, 2006 Release Papers, were obtained while Plaintiff was under duress and lacking the ability to exercise her free will, due to threats made by Defendant Jane Doe 4 unless Plaintiff executed the instrument. Plaintiff was approximately 5'7" tall and weighed approximately 140 pounds, while certain County Defendants (to be identified), perpetrating such threats, who were either about the same height or taller but extremely heavier in weight, were however extremely larger women than the Plaintiff. In consequence of such threats, Plaintiff complied with the demands of Defendants.

351. The signature of Plaintiff to the Release Papers was obtained under duress, threats, and fear engendered when Defendants on February 14, 2006, at the Hinds County Detention Center, in the presence of other Detention Center employees, threatened to subject the Plaintiff to further injury and/or harm unless she executed the Release Papers. Defendant making the threats with knowledge that Plaintiff was the daughter of a preacher, was currently employed by a law firm, that Plaintiff felt threatened and forced to sign the instrument and that Plaintiff was not signing voluntarily, but while under duress due to the threats against her and concerns of further injury/harm to her.

352. Defendants obtained from Plaintiff the Release Papers on which Plaintiff also brings this action, as a result of duress, in that Defendants employed violent threats, menacing conduct, and gestures directed to Plaintiff as described herein, in order to obtain such Release Papers, and deprived the Plaintiff of the ability to exercise her free will.

353. Because of such threats and intimidating conduct directed by Defendants toward Plaintiff, Plaintiff was forced into a state of emotional stress, trauma and exhaustion . Plaintiff

executing the Release Papers only to avoid further bodily injury, injuries and harm that she feared she would otherwise suffer at the hands of County Defendants.

354. Defendant Lewis unlawfully seized and removed from Plaintiff's person a micro-cassette recorder and tape from the Plaintiff's person, so that it could not be found and to dispose of said evidence. While certain items were returned to the Plaintiff, Defendant Lewis elected to retrieve such property for the purposes of destroying evidence. The Plaintiff requested return of property in correspondence to the Hinds County Justice Court Clerk and Lewis. To date, personal property has not been returned.

COUNT EIGHT
IMMUNITY

Plaintiff herein incorporates the Paragraphs 1 through 353 as if set forth in full herein. In support of her claims County employees who may assert entitlement to immunity are not protected under same, the Plaintiff relies upon case laws governing said matter, some of which are attached hereto at **Exhibit "28"** and incorporated herein by reference; therefore states as follows:

355. While Defendant Lewis, Constable of Hinds County – District 4, is an elected official employed by Hinds County, the unlawful and illegal acts complained of by him in this Complaint does not afford him "immunity" from damages sought herein.

356. The actions of Lewis was committed ***outside*** the scope of his jurisdiction; moreover, Lewis engaged in criminal and fraudulent acts in regards to handling of legal process and subsequent acts therefrom, which to his own demise does not afford him any defense to immunity.

357. The unlawful and illegal acts rendered the Plaintiff by Lewis was done with willful, malicious and wanton intent.

358. While Defendant Skinner, Hinds County Justice Court Judge – District 4, being an elected official employed by Hinds County, the unlawful and illegal acts complained of by him in his judicial capacity does not afford him "immunity" from damages sought through this Complaint.

359. Defendant Skinner acted wholly ***without*** jurisdiction and did so knowingly that his acts were without jurisdiction, so that his judicial office could afford him **no** protection under immunity.

360. Evidence in the record of the Justice Court and that of Dial Defendants clearly supports that the Plaintiff provided Skinner and Dial Defendants with timely and adequate information containing case law and facts to place them on notice that the Justice Court/Skinner lacked jurisdiction over the Plaintiff and the matter brought before him. Nevertheless, contrary to law, Skinner took it upon himself to blatantly disregard the rights, privileges, etc. of the Plaintiff and deprive her equal protection of laws and due process of laws. Rights deprived the Plaintiff which are clearly secured under the Landlord and Tenants Act, Civil Rights Act, Constitution and other applicable laws governing said matters.

361. Defendant Skinner developed a pattern of behavior for such unlawful and illegal acts sanctioned and/or or orchestrated against the Plaintiff with the assistance of Dial Defendants, Lewis and other willing participants to the conspiracy launched against the Plaintiff. That despite the notification and fair warning extended to him through the pleadings and evidence presented the Justice Court, Skinner was adamant in his disregard to the rights of the Plaintiff in that he thought that if any legal action were brought against him, he would assert a

false defense such as judicial immunity. However, to his demise such immunity defense is not afforded him, in that he clearly conducted acts outside the scope of his jurisdiction. Therefore, such actions are not immuned and subject to liability.

362. The record evidence and supporting case law clearly supports Skinner conspired with Dial Defendants and Lewis to deprive the Plaintiff rights secured under the Constitution and other applicable laws. Skinner having a total disregard to the rights of the Plaintiff.

363. Defendant Skinner used his judicial office to abuse the power and/or authority invested in him as a judge for the purposes of injuring and causing the Plaintiff harm. The acts of Skinner were willful, malicious and wanton.

364. The laws are clear that both Defendant Lewis and Skinner must prove immunity for the function brought in question. Mere "verbal" claims of immunity which lacks evidence to rebut the evidence presented by Plaintiff is an insufficient defense.

365. Defendant Skinner's conduct and acts taken against the Plaintiff clearly violates established statutory or constitutional rights of which a reasonable person and/or judge would have known when presented with the same case law and evidence as that presented by the Plaintiff, that the Justice Court/Skinner lacked jurisdiction over the Plaintiff.

366. Federal Courts when determining whether a defendant is entitled to qualified immunity in a 1983 action, ordinarily begin with a two-step test:

a. Whether the conduct attributed to the defendant violated federal law.
   - The acts/conduct of both Skinner and Lewis attributed to the Plaintiff violated federal law and deprived Plaintiff equal protection of the laws and due process of laws secured under the Constitution.

b. Whether right was clearly established.

- The right(s) both Skinner and Lewis deprived the Plaintiff of is/are clearly established under the laws governing Landlord and Tenant Act, Civil Rights Act, Constitution and other applicable laws governing said matters.

The contours of the right were sufficiently and adequately clear that a reasonable judicial officer and/or officer of the law given the facts surrounding legal process and subsequent acts of the Dial Defendants and Skinner would have understood what he/she was doing violated the rights of the Plaintiff. Moreover, the fact that Lewis failed to complete "proof of service" required by law and Skinner's failure to require "proof of service" and Lewis' attendance is adequate to sustain both knew that they were committing unlawful and illegal acts which violated not only state laws but federal laws and that the rights deprived the Plaintiff are clearly established.

367. In actions asserting the defense of "immunity" from damages, both Skinner and Lewis bears the burden of justifying said defense. There is sufficient case law and evidence in the record of the Justice Court to support these had Defendants sufficient information to investigate and/or inquire as to whether or not the arguments presented by Plaintiff were correct and whether or not jurisdiction could be had on the Plaintiff.

368. The record evidence with supporting case law supports that it may be inferred and/or implied from the acts of Skinner and Lewis they conspired with Dial Defendants to cause the Plaintiff injury in harm in furtherance of the conspiracy instituted by the Dial Defendants. Moreover, through said conspiracy deprived the Plaintiff equal protection and due process of laws. Rights secured under federal and state laws.

369. In deciding matters alleging immunity, the Court is to accept the allegations in the Plaintiff's Complaint as true.

WHEREFORE, for the unlawful and illegal acts committed by these Defendants, Plaintiff requests judgment of and against Defendants, and each of them, in both their individual and official capacities, and seeks compensatory and punitive damages, attorneys' fees, costs, and interest and such other and further general and special relief as Plaintiff may be entitled.

370. Compensatory in the amount of $500,00.00.

371. Punitive Damages in the amount of $25,000,000.00.

372. Reasonable attorney fees.

373. Costs of suit; and

374. Such other and further relief as the court deems just and proper.

COUNT NINE
INTENTIONAL INFLICTION OF EMOTION DISTRESS

375. Plaintiff realleges and incorporates by reference herein Paragraphs 1 through 374 as if set forth in full herein.

376. The conduct of Defendants in this action , was extreme and outrageous and beyond the scope of conduct which should be tolerated by citizens in a democratic and civilized society. However, in order to deliberately injure Plaintiff, Defendants committed the aforementioned extreme and outrageous acts with intent to inflict sever mental and emotional distress upon Plaintiff.

377. As a direct and proximate result of Defendants' willful, intentional and malicious conduct, Plaintiff suffered severe and extreme mental and emotional distress. Therefore, Plaintiff is entitled to an award of punitive damages as against the individually named Defendants. Plaintiff has suffered damages as set forth in this Complaint.

COUNT TEN
NEGLIGENCE

378. Plaintiff realleges and incorporates by reference herein Paragraphs 1 through 377 of this Complaint, except for any and all allegations of intentional, malicious, extreme, outrageous, wanton and oppressive conduct by Defendants, and any and all allegations requests punitive damages.

379. At all times mentioned herein, Defendants were subject to a duty of care, to avoid causing unnecessary physical harm and distress to citizens in the exercise of their duties. The conduct of Defendants, as set forth herein, did not comply with the standard of care to be exercised by reasonable persons or private citizens or officers of the law, proximately causing Plaintiff to suffer damages as set forth in this Complaint.

COUNT ELEVEN
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

380. Plaintiff realleges and incorporates by reference herein Paragraphs 1 through 379 of this Complaint, except for any and all allegation of intentional, malicious, extreme, outrageous, wanton and oppressive conduct by Defendants, and any and all allegations requesting punitive damages.

381. At all times herein mentioned, Defendants were subject to a duty of care, to avoid causing unnecessary physical harm and distress to citizens. The conduct of Defendants, as set forth in this Complaint, did not comply with the standard of care to be exercised by reasonable private citizens or officials of law, proximately causing Plaintiff to suffer damages as set forth in this Complaint.

382. The conduct of Defendants as set forth herein, was extreme and outrageous and beyond the scope and conduct which would be tolerated by citizens in a democratic and civilized society.

383. As a proximate result of Defendants' conduct, Plaintiff suffered severe and extreme mental and emotional distress. Plaintiff has suffered damages as set forth in this Complaint.

WHEREFORE, Plaintiff pray for relief as set forth:

JURY DEMAND

384. Plaintiff hereby demands a jury trial in this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

385. Generally damages in an amount no less than $1,000,000.00.

386. Special damages in an amount no less than $2,000,000.00.

387. Punitive damages in an amount no less than $50,000,000.00.

388. Declare that the acts and omissions of the Defendants with regard to Plaintiff's rights under the Civil Rights Act, United States Constitution, Landlord and Tenant Act and other governing laws were in violation of the United States Constitution.

389. Enter the applicable injunctions and restrain orders requiring Defendants, their agents, employees, attorneys and all persons acting in concert with them to cease their unconstitutional and unlawful practices.

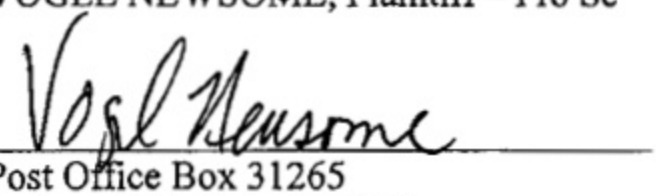
390. Reasonable attorney fees.

391. Costs of suit incurred herein; and

392. Such other and further relief as the Court may deem just and proper.

Respectfully submitted this 14th day of February, 2007.

VOGEL NEWSOME, Plaintiff – Pro Se



Post Office Box 31265
Jackson, Mississippi 39286
Phone: 601/885-9536 or 513/680-2922

Department of Administration
Municipal Court Services

327 East Pascagoula Street
Post Office Box 17
Jackson, Mississippi 39205-0017

Frank E. Melton
Mayor of the City of Jackson

June 5, 2008

VOGEL NEWSOME
32681 HWY 18
UTICA,MS 39175

CASE/CITATION 2005T193803-VTO

MR. NEWSOME;

Please be advised that we have scheduled a hearing date for you on the above case/cit number for **Thursday August 14,2008**, at 9:00 a.m. in **COURTROOM #127** of Jackson Municipal Court Services at 327 E Pascagoula st. Jackson, Mississippi 39201.

Failure to appear or pay will result in a warrant being issued for your arrest.

If you have further questions, please contact this office at (601) 960-1963.

Respectfully,

Debra McGowan

Debra McGowan, Court Operations Supervisor
Jackson Municipal Court

Ej

Exhibit "33"

MISSISSIPPI CODE OF 1972

As Amended

SEC. 97-1-1. Conspiracy.

If two (2) or more persons conspire either:

(a) To commit a crime; or

(b) Falsely and maliciously to indict another for a crime, or to procure to be complained of or arrested for a crime; or

(c) Falsely to institute or maintain an action or suit of any kind; or

(d) To cheat and defraud another out of property by any means which are in themselves criminal, or which, if executed, would amount to a cheat, or to obtain money or any other property or thing by false pretense; or

(e) To prevent another from exercising a lawful trade or calling, or doing any other lawful act, by force, threats, intimidation, or by interfering or threatening to interfere with tools, implements, or property belonging to or used by another, or with the use of employment thereof; or

(f) To commit any act injurious to the public health, to public morals, trade or commerce, or for the perversion or obstruction of justice, or of the due administration of the laws; or

(g) To overthrow or violate the laws of this state through force, violence, threats, intimidation, or otherwise; or

(h) To accomplish any unlawful purpose, or a lawful purpose by any unlawful means; such persons, and each of them, shall be guilty of a felony and upon conviction may be punished by a fine of not more than five thousand dollars ($5,000.00) or by imprisonment for not more than five (5) years, or by both.

Provided, that where the crime conspired to be committed is capital murder or murder as defined by law or is a violation of section 41-29-139 (b)(1) or section 41-29-139 (c)(2)(D), Mississippi Code of 1972, being provisions of the Uniform Controlled Substances Law, the offense shall be punishable by a fine of not more than five hundred thousand dollars ($500,000.00) or by imprisonment for not more than twenty (20) years, or by both.

Provided, that where the crime conspired to be committed is a misdemeanor, then upon conviction said crime shall be punished as a misdemeanor as provided by law.

SOURCES: Codes, 1892, Sec. 1006; 1906, Sec. 1084; Hemingway's 1917, Sec. 810; 1930, Sec. 830; 1942, Sec. 2056; Laws, 1954, Ex. ch. 20; 1968, ch. 343, Sec. 1; 1981, ch. 488, Sec. 1, eff from and after passage (approved April 15, 1981.)

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EXHIBIT "32"

HINDS COUNTY JUSTICE COURT

ABSTRACT OF COURT RECORD

STATE OF MISSISSIPPI DOCKET 1180 PAGE 584

COUNTY OF HINDS AGENCY CODE 999 TICKET NO. 0049429

10/15/07 9:04 AM

DEFENDANT

NAME NEWSOME VOGEL RACE ___ SEX M

ADDRESS 1434 HAWTHORNE CV

CITY JACKSON STATE MS ZIP CODE 39286

DRIVER'S LICENSE NUMBER ___ STATE ___ DATE OF BIRTH ___

VEHICLE INFORMATION

REGISTRATION (TAG) NO. ___ STATE ___ YEAR ___

VEHICLE MODEL YEAR ___ MAKE ___ TYPE ___

VIOLATION

%BAC ___

CHARGED WITH : DISORDERLY CONDUCT-FAILURE TO SPEED/ZONE ___

DATE OF VIOLATION 02-14-06 COURT DATE 10-12-07 HWY. OR STREET ___

CHARGES WERE FILED BY : LEWIS JON - CON BADGE NO. ___

DEFENDANT ENTERED A PLEA OF : ___

JUDGMENT OF COURT REMANDED TO FILE

BY JUDGE : STEVEN PICKETT

REMARKS BY COURT ___

DEFENDANT WAS FINED $ .00 PLUS ASSESSMENTS OF $ .00

SENTENCED TO : ___

BAIL FORFEITED ( ) APPEALED ( ) FINE PAID ( )

I CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF MY COURT RECORD AS RECORDED IN :

DOCKET 1180 PAGE 584

PATRICIA T. WOODS
Hinds County Justice Court Clerk

By ___ D.C.

EXHIBIT "31"

JCVABS1

HINDS COUNTY JUSTICE COURT

ABSTRACT OF COURT RECORD

STATE OF MISSISSIPPI DOCKET 1180 PAGE 585

COUNTY OF HINDS AGENCY CODE 999 TICKET NO. 0049430

10/15/07 9:05 AM

DEFENDANT

NAME NEWSOME VOGEL RACE ___ SEX M

ADDRESS 1434 HAWTHORNE CV

CITY JACKSON STATE MS ZIP CODE 39286

DRIVER'S LICENSE NUMBER ___ STATE ___ DATE OF BIRTH ___

VEHICLE INFORMATION

REGISTRATION (TAG) NO. ___ STATE ___ YEAR ___

VEHICLE MODEL YEAR ___ MAKE ___ TYPE ___

VIOLATION

%BAC ___

CHARGED WITH : RESISTING ARREST 97-9-73 SPEED/ZONE ___

DATE OF VIOLATION 02-14-06 COURT DATE 10-12-07 HWY. OR STREET ___

CHARGES WERE FILED BY : LEWIS JON - CON BADGE NO. ___

DEFENDANT ENTERED A ~~PLEA OF~~ : ___

JUDGMENT OF COURT REMANDED TO FILE

BY JUDGE : STEVEN PICKETT

REMARKS BY COURT ___

DEFENDANT WAS FINED $ .00 PLUS ASSESSMENTS OF $ .00

SENTENCED TO : ___

BAIL FORFEITED ( ) APPEALED ( ) FINE PAID ( )

I CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF MY COURT RECORD AS RECORDED IN :

DOCKET 1180 PAGE 585

PATRICIA T. WOODS
Hinds County Justice Court Clerk

By ___ D.C.

JCV8851

JUSTICE COURT NOTICE OF TRIAL

STATE OF MISSISSIPPI

0999-0049429

COUNTY OF HINDS

DOCKET 1180 PAGE 584

585

LEWIS JON - CONSTABLE, PLAINTIFF

VS.

NEWSOME VOGEL, DEFENDANT

YOUR TRIAL IN THE ABOVE CASE HAS BEEN SET FOR THE 7TH DAY OF AUGUST, A.D., 2007 AT 1:30 PM. YOU MUST APPEAR IN JUSTICE COURT FOR THIS TRIAL. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT THIS OFFICE AT THE ADDRESS AND/OR TELEPHONE NUMBER GIVEN BELOW.

Issued on the 16TH day of JULY, A.D., 2007.

PATRICIA T. WOODS
Hinds County Justice Court Clerk
407 E. Pascagoula Street - Suite 333
P.O. Box 3490
Jackson, Mississippi 39207
(601) 965-8800

By _____ D.C.

IMPORTANT NOTICE

1. You must appear in court for this trial.
2. Any and all witnesses must appear. WRITTEN STATEMENTS ARE NOT ALLOWED!
3. To establish damages, an expert witness (doctor, mechanic, repairman, etc.) MUST be in court and testify. WRITTEN ESTIMATES ARE NOT ALLOWED TO BE USED!
4. You may have a witness subpoenaed to appear by court order IF you file a written request and pay the fee to the Justice Court Clerk at least five (5) days prior to the trial. The fee for a subpoena is $25.00 for each subpoena you request to be issued. You must provide the Clerk's office with the person's name and the correct address where the subpoena(s) may be served.

EXHIBIT "30"

DOCKET 1180 PAGE 585

999-0049430

LEWIS JON - CONSTABLE

STATE OF MISSISSIPPI

VS.

NEWSOME VOGEL

CHARGE RESISTING ARREST 97-9-73

FILED 07-11-07

PLEA
H 8-7-07 9:30 Am

DISPOSITION

Attorney for Plaintiff
Richard Rehfeldt
Attorney for Defendant

JCVENV2

DOCKET 1180 PAGE 584
585

999-0049429

LEWIS JON - CONSTABLE

STATE OF MISSISSIPPI

VS.

NEWSOME VOGEL

CHARGE DISORDERLY CONDUCT-FAILURE TO COMPLE WITH LAW ENFORCEMENT

FILED 07-11-07

PLEA
H 8-7-07 9:30 Am

DISPOSITION

Attorney for Plaintiff
Richard Refeldt
Attorney for Defendant
460 Briarwood Dr Ste 500
JCVENV2 Jackson, MS 39206

GENERAL AFFIDAVIT

STATE OF MISSISSIPPI

COUNTY OF HINDS

DOCKET 1180 PAGE 585
909-0049430

BEFORE ME, the undersigned Justice Court Clerk of Hinds County, personally came

Jon Lewis

being first duly sworn, makes affidavit that Vagel Newsome
1734 Hawthorne Co
Jackson, MS 39206 on or about

the 14 day of February 06, in the county aforesaid, did willfully and unlawfully
Resisting Arrest 97-9-73
did willfully and unlawfully resist by force the lawful arrest by Constable Jon Lewis, a state law enforcement officer.

against the peace and dignity of the State of Mississippi.

Witness my hand this the 3 day of July, 07.

Affiant's Address

407 Pascagoula St.
Jackson, MS

Phone

PATRICIA T. WOODS
Hinds County Justice Court Clerk
407 East Pascagoula Street - Suite 333
P.O. Box 3490
Jackson, Mississippi 39207
(601) 965-8800

BY _____ D.C.

JCVAFF1

GENERAL AFFIDAVIT

STATE OF MISSISSIPPI

COUNTY OF HINDS

DOCKET 1180 PAGE 584
099-00 49429

BEFORE ME, the undersigned Justice Court Clerk of Hinds County, personally came

Jon Lewis

being first duly sworn, makes affidavit that Vogel Newsome
1434 Hawthorne Cv.
Jackson MS 39286 on or about

the 14 day of February 06, in the county aforesaid, did willfully and unlawfully
97-35-7(1)(a) Disorderly Conduct - Failure To Comply with Request of Command of Law Enforcement officer

did willFully and unlawfully, with the intent to provoke a breach of peace resulting in a breach of peace, refuse to comply with the command order of Jon Lewis, a law enforcement officer who had the authority to then and there arrest any person for a violation of the law, to move from the apartment in which she was being evicted.

against the peace and dignity of the State of Mississippi.

Witness my hand this the 3 day of July, 07.

Affiant's Address

407 Pascagoula St.
Jackson MS.

Phone

PATRICIA T. WOODS
Hinds County Justice Court Clerk
407 East Pascagoula Street - Suite 333
P.O. Box 3490
Jackson, Mississippi 39207
(601) 965-8800

BY _____ D.C.

JCVAFF1

MISSISSIPPI CODE OF 1972

As Amended

SEC. 97-1-3. Accessories before the fact.

Every person who shall be an accessory to any felony, before the fact, shall be deemed and considered a principal, and shall be indicted and punished as such; and this whether the principal have been previously convicted or not.

SOURCES: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 8 (6); 1857, ch. 64, art. 2; 1871, Sec. 2484; 1880, Sec. 2698; 1892, Sec. 950; 1906, Sec. 1026; Hemingway's 1917, Sec. 751; 1930, Sec. 769; 1942, Sec. 1995.

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EXHIBIT "29"

8/15/2007

§ 97-3-85. Threats and intimidation; by letter or notice.

If any person shall post, mail, deliver, or drop a threatening letter or notice to another, whether such other be named or indicated therein or not, with intent to terrorize or to intimidate such other, he shall, upon conviction, be punished by imprisonment in the county jail not more than six months, or by fine not more than five hundred dollars, or both.

Sources: Codes, 1892, § 1303; Laws, 1906, § 1377; Hemingway's 1917, § 1117; Laws, 1930, § 1147; Laws, 1942, § 2384.

Exhibit "28"

SOURCES: Laws, 2006, ch. 387, § 12, eff from and after July 1, 2006.

§ 97-9-125. Tampering with physical evidence.

(1) A person commits the crime of tampering with physical evidence if, believing that an official proceeding is pending or may be instituted, and acting without legal right or authority, he:

(a) Intentionally destroys, mutilates, conceals, removes or alters physical evidence with intent to impair its use, verity or availability in the pending or prospective official proceeding;

(b) Knowingly makes, presents or offers any false physical evidence with intent that it be introduced in the pending or prospective official proceeding; or

(c) Intentionally prevents the production of physical evidence by an act of force, intimidation or deception against any person.

(2) Tampering with physical evidence is a Class 2 felony.

SOURCES: Laws, 2006, ch. 387, § 13, eff from and after July 1, 2006.

§ 97-9-127. Retaliation against a public servant or witness.

(1) A person commits the offense of retaliation if he intentionally or knowingly harms or threatens to harm another by any unlawful act in retaliation for anything lawfully done in the capacity of public servant, witness, prospective witness or informant.

(2) Retaliation is a Class 2 felony.

SOURCES: Laws, 2006, ch. 387, § 14, eff from and after July 1, 2006.

§ 97-9-129. Sentencing.

(1) A person who has been convicted of any Class 1 felony under this article shall be sentenced to imprisonment for a term of not more than five (5) years or fined not more than Five Thousand Dollars ($5,000.00), or both.

(2) A person who has been convicted of any Class 2 felony under this article shall be sentenced to imprisonment for a term of not more than two (2) years or fined not more than Three Thousand Dollars ($3,000.00), or both.

(3) A person who has been convicted of any misdemeanor under this article shall be sentenced to confinement in the county jail for a term of not more than one (1) year or fined not more than One Thousand Dollars ($1,000.00), or both.

SOURCES: Laws, 2006, ch. 387, § 15, eff from and after July 1, 2006.

EXHIBIT "27"

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:

Clerk of Hinds County Board of Supervisors
Hinds County Chancery Court Bldg.
316 S. President Street
Jackson, MS 39286

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) [illegible] C. Date of Delivery 8/15

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 ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
(Transfer from service label) 7006 0100 0006 3587 5600

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

UNITED STATES POSTAL SERVICE JACKSON MS 392

15 AUG 2006 PM 1

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Vogel Newsome
Post Office Box 31265
Jackson, MS 39286

B013

EXHIBIT "26"

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:

Honorable Douglas Anderson
President - Hinds Co. Bd of Supvrs.
P.O. Box 686
Jackson, MS 39205

COMPLETE THIS SECTION ON DELIVERY

A. Signature
x Pearlie Johnson ☐ Agent ☐ Addressee

B. Received by (Printed Name) Pearlie Johnson
C. Date of Delivery AUG 15 2006

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 ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
(Transfer from service label) 7006 0100 0006 3587 5631

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Vogel Newsome
Post Office Box 31265
Jackson, MS 39286

NOTICE OF INTENT TO FILE LAWSUIT and
OFFICIAL COMPLAINT AGAINST HINDS COUNTY CONSTABLE JON C. LEWIS

TO: **VIA CERTIFIED MAIL – Return Receipt Requested**
Clerk of the Hinds County Board of Supervisors
Hinds County Chancery Court Building
316 S. President Street
Jackson, Mississippi 39201

COPY: **VIA CERTIFIED MAIL – Return Receipt Requested**
Honorable Douglas Anderson
President of Hinds County Board of Supervisors
Post Office Box 686
Jackson, Mississippi 39205

RE: **Unlawful/Malicious Arrest of Vogel D. Newsome on February 14, 2006**
Location: Spring Lake Apartments (1434 Hawthorne Cove, Jackson, Mississippi)

DATE: August 11, 2006

COMES NOW Vogel D. Newsome ("Newsome") before the Hinds County Board of Supervisors ("The Board") and submits this her *Notice of Intent to File a Lawsuit* against Hinds County, the Hinds County Detention Center – Raymond, Mississippi, Hinds County Constable Jon C. Lewis ("Hinds County") and any and all other applicable parties within the time allowed under the statute of limitations as a result of an unlawful arrest against her which occurred on or about February 14, 2006, at Spring Lake Apartments in Jackson, Mississippi at the following location: 1434 Hawthorne Cove, Jackson, Mississippi 39272 – and *Official Complaint Against Hinds County Constable Jon C. Lewis*.

PLEASE TAKE NOTICE that said lawsuit will be filed on or before February 14, 2007, or within the applicable time allotted by statute to file such claims for damages in regards to the above referenced matter. Said Notice is being provided within the laws governing said matters.

PLEASE TAKE NOTICE that said lawsuit will be filed in the appropriate court which have jurisdiction over said matters under the applicable laws and statutes.

PLEASE TAKE NOTICE that the Board of Supervisors is hereby given **90 days** from receipt of said *Notice of Intent to File Lawsuit* and the *Official Complaint Against Hinds County Constable Jon C. Lewis* to provide Newsome with The Board's response.

PLEASE TAKE NOTICE that this instant submittal, is an *Official Complaint against Hinds County Constable Jon C. Lewis* ("Lewis") for subjecting Newsome to an unlawful/malicious arrest on February 14, 2006, which deprived her of protected rights and infringed upon rights secured under the Constitution and other applicable laws. Prior to said arrest, Newsome advised Lewis of said violations. Thus, Lewis and his assistant and others were timely, properly and adequately aware of their unlawful and illegal actions; however, knowingly and willingly made a conscious decision to proceed with the unlawful/malicious arrest of Newsome. During said arrest Lewis subjected Newsome to unlawful search and seizure of her property and kept said property.

On said date, Newsome was taken to the Hinds County Detention Center in Raymond, Mississippi by Constable Lewis and his assistant, where she was subjected to some of the following (however, not limited to these just listed, neither is list in particular order): (1) held against her will and objections, (2) subjected to verbal (obscene) and physical abuse, (3) threats, (4) shackled and/or chained, (4) denied any phone calls, (5) denied privacy, (6) subjected to scorn and ridicule, (7) denied *repeated* requests to speak to Sheriff Malcom McMillin, (8) threatened if she did not sign documents, (9) intimidation, (10) imprisonment, (11) search of person – which was humiliating and violating, (12) booked, etc.

Newsome is hereby requesting that the Hinds County Board of Supervisors accept this instant submittal as an Newsome's Official Complaint filed against Hinds County Constable Jon C. Lewis and that The Board investigate the allegations asserted herein and provide her with its findings on same.

PLEASE TAKE NOTICE that the lawsuit to be filed against Hinds County, its representatives and other applicable parties may include the following – however is not limited to said list and may be amended at the time of the filing of the lawsuit:

1. Slander and/or Libel;
2. Assault;
3. Invasion of Privacy;
4. Intentional Infliction of Emotional Distress;
5. False Imprisonment;
6. Malicious Arrest;
7. Theft;
8. Illegal Search and Seizure of Personal Property;
9. Fraudulent Concealment of Cause of Action;
10. Failure to Execute and Return Execution; and
11. Civil Rights Violations, etc.

and will be filed under the applicable *statutes/laws* addressing such claims/matters.

PLEASE TAKE NOTICE that all documents, records, items, etc. in the possession of Hinds County, the Constable, Hinds County representatives, and The Board in regards to this matter are to be preserved and protected in preparation of this lawsuit.

PLEASE TAKE NOTICE that any and all responses/inquiries to this Notice and Complaint can be submitted to Newsome at the address provided below. Any such changes to address information will be made to The Board in writing.

Respectfully submitted this the **11th** day of **August, 2006**.

VOGEL D. NEWSOME
Post Office Box 31265
Jackson, Mississippi 39286
Phone: 601/885-9536

Jackson 04/19/06

Supervisors Looking Into Constable's Methods

By Andrew Hasbun
andrew@wlbt.net

The Hinds County Board of Supervisor's is looking into the methods used by the county's constable. At issue, is how he collects his fees. The constable says he has done nothing wrong.

In a letter to the county administrator, Justice Court Clerk Patricia Woods accused Constable John Lewis of using questionable tactics.

"There is absolutely nothing criminal here, nothing wrong," said Constable Jon Lewis.

The clerk said Friday, April 7th, several defendants appeared at justice court to pay fines, but a judge wasn't present. A Utica man received a letter telling him to appear, but the man had already paid his speeding ticket in January.

After learning that, the clerk told her staff not to collect any fees from defendants who did not have outstanding warrants.

"I refuse to be a part of his collection process," said Woods in her letter to County Administrator Anthony Brister. "I cannot imagine how many letters were mailed or payments received at his home address."

"I am welcoming an investigation from the auditor's office. I would like it to be looked into very thoroughly," said Lewis.

Constable Lewis says the letter to the defendant about the speeding ticket

EXHIBIT "25"

was a mistake on his part, but he makes no apologies for using tough methods.

In one letter to a defendant, Lewis advised the man not to talk to anyone but him. He told the man not to call the court. Lewis tells defendants that because he says it helps ensure he collects his $35 service fee, which keeps the constable's operation running.

"I've learned that if you are weak, and you see weaknesses in the officer, they don't listen," said Lewis.

That $35 fee is tacked on if someone doesn't pay their fine and the constable has to serve a warrant. Lewis says he has lost thousands of dollars because of mishandled fees, and he won't let that continue.

The Board of Supervisors held an executive session meeting Monday to discuss the matter. Since justice court falls under the board's jurisdiction, the board's attorney will be investigating.

FAXED
3/17/06
1143A

FACSIMILE: 601/973-5532

TO:	Constable Jon C. Lewis
FROM:	V. Newsome
DATE:	March 17, 2006
RE:	**REQUEST FOR ARREST REPORT & RETURN OF PERSONAL PROPERTY RETRIEVED BY CONSTABLE JON C. LEWIS - ARREST OF VOGEL NEWSOME BY CONSTABLE JON C. LEWIS ON FEBRUARY 14, 2006** *Spring Lake Apartments v. Vogel Newsome*; In the Hinds County Justice Court, Hinds County, Mississippi; Docket No. 2150 Page 53
NO PAGES:	2 (Including this page)

EXHIBIT "24"

VOGEL D. NEWSOME

Post Office Box 31265
Jackson, Mississippi 39286
Phone: 601/885-9536

FAXED 3/17/06 @ 1143A

March 17, 2006

RESPONSE REQUESTED BY MARCH 24, 2006

VIA U.S MAIL & FACSIMILE: 601/973-5532
Honorable Patricia T. Woods
Hinds County Justice Court Clerk
Post Office Box 3490
Jackson, Mississippi 39207

VIA U.S. MAIL & FACSIMILE: 601/973-5532
Jon C. Lewis
Hinds County Constable – District 4
Post Office Box 3490
Jackson, Mississippi 39207

RE: REQUEST FOR ARREST REPORT & RETURN OF PERSONAL PROPERTY RETRIEVED BY CONSTABLE JON C. LEWIS
ARREST OF VOGEL NEWSOME BY CONSTABLE JON C. LEWIS ON FEBRUARY 14, 2006
Spring Lake Apartments v. Vogel Newsome; In the Hinds County Justice Court, Hinds County, Mississippi; Docket No. 2150 Page 539

Dear Ms. Woods and Mr. Lewis:

Please accept this correspondence as my request for a copy of the ***Arrest Report*** regarding my arrest by Constable Jon C. Lewis on February 14, 2006, that took place at Spring Lake Apartments located at 1434 Hawthorne Cove in Jackson, Mississippi. This incident arose out of unlawful actions initiated by Spring Lake Apartments wherein the County rendered its services and I was subjected to an unjust/unlawful arrest. It has been approximately **one (1)** month since this arrest took place. Therefore, I believe that an Arrest Report should be on record by now. THEREFORE, PLEASE TAKE NOTICE that I am requesting the Arrest Report be submitted to me within the next **five (5)** business days at the mailing address provided above.

At the time of my arrest Constable Lewis unlawfully removed and retrieved personal property (a micro cassette recorder) from me and failed to return it to me or turn it in at the Hinds County Detention Center upon my admission. At this time, I am also DEMANDING that Mr. Lewis return my personal property or an explanation as to why it is being kept/retained and/or the reason for the destruction of said property.

Your assistance regarding these requests is greatly appreciated. Please understand that any further delays and/or failure by Mr. Lewis and/or this Court in producing the Arrest Report and any and all supporting documents will be taken as efforts to **delay** and/or ***obstruct*** **justice** in this matter.

I look forward to working on a resolution to these requests. Should you have further questions or concerns needing to be addressed, please do not hesitate to contact me.

Sincerely,
Vogel Newsome
Vogel Newsome

cc: Personal File

* * * COMMUNICATION RESULT REPORT (MAR. 17. 2006 11:43AM) * * *

TTI PAGE KRUGER HOLLAND

FILE MODE	OPTION	ADDRESS (GROUP)	RESULT	PAGE
5631 MEMORY TX		96019735532	OK	2/2

REASON FOR ERROR
E-1) HANG UP OR LINE FAIL
E-2) BUSY
E-3) NO ANSWER
E-4) NO FACSIMILE CONNECTION

FACSIMILE: 601/973-5532

TO:	Constable Jon C. Lewis
FROM:	V. Newsome
DATE:	March 17, 2006
RE:	**REQUEST FOR ARREST REPORT & RETURN OF PERSONAL PROPERTY RETRIEVED BY CONSTABLE JON C. LEWIS - ARREST OF VOGEL NEWSOME BY CONSTABLE JON C. LEWIS ON FEBRUARY 14, 2006** *Spring Lake Apartments v. Vogel Newsome*; In the Hinds County Justice Court, Hinds County, Mississippi; Docket No. 2150 Page 53
NO PAGES:	2 (Including this page)

FACSIMILE: 601/973-5532

TO: Honorable Patricia T. Woods
FROM: V. Newsome
DATE: March 17, 2006
RE: **REQUEST FOR ARREST REPORT & RETURN OF PERSONAL PROPERTY RETRIEVED BY CONSTABLE JON C. LEWIS - ARREST OF VOGEL NEWSOME BY CONSTABLE JON C. LEWIS ON FEBRUARY 14, 2006**
Spring Lake Apartments v. Vogel Newsome; In the Hinds County Justice Court, Hinds County, Mississippi; Docket No. 2150 Page 53
NO PAGES: 2 (Including this page)

VOGEL D. NEWSOME

Post Office Box 31265
Jackson, Mississippi 39286
Phone: 601/885-9536

FAXED 3/17/06 1142A

March 17, 2006

RESPONSE REQUESTED BY MARCH 24, 2006

VIA U.S MAIL & FACSIMILE: 601/973-5532
✓ Honorable Patricia T. Woods
Hinds County Justice Court Clerk
Post Office Box 3490
Jackson, Mississippi 39207

VIA U.S. MAIL & FACSIMILE: 601/973-5532
Jon C. Lewis
Hinds County Constable – District 4
Post Office Box 3490
Jackson, Mississippi 39207

RE: REQUEST FOR ARREST REPORT & RETURN OF PERSONAL PROPERTY RETRIEVED BY CONSTABLE JON C. LEWIS
ARREST OF VOGEL NEWSOME BY CONSTABLE JON C. LEWIS ON FEBRUARY 14, 2006
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Your assistance regarding these requests is greatly appreciated. Please understand that any further delays and/or failure by Mr. Lewis and/or this Court in producing the Arrest Report and any and all supporting documents will be taken as efforts to **delay** and/or ***obstruct*** **justice** in this matter.

I look forward to working on a resolution to these requests. Should you have further questions or concerns needing to be addressed, please do not hesitate to contact me.

Sincerely,
Vogel Newsome
Vogel Newsome

cc: Personal File

* * * COMMUNICATION RESULT REPORT (MAR. 17. 2006 11:42AM) * * *

TTI PAGE KRUGER HOLLAND

FILE MODE	OPTION	ADDRESS (GROUP)	RESULT	PAGE
5630 MEMORY TX		96019735532	OK	2/2

REASON FOR ERROR
E-1) HANG UP OR LINE FAIL
E-2) BUSY
E-3) NO ANSWER
E-4) NO FACSIMILE CONNECTION

FACSIMILE: 601/973-5532

TO: Honorable Patricia T. Woods
FROM: V. Newsome
DATE: March 17, 2006
RE: **REQUEST FOR ARREST REPORT & RETURN OF PERSONAL PROPERTY RETRIEVED BY CONSTABLE JON C. LEWIS - ARREST OF VOGEL NEWSOME BY CONSTABLE JON C. LEWIS ON FEBRUARY 14, 2006**
Spring Lake Apartments v. Vogel Newsome; In the Hinds County Justice Court, Hinds County, Mississippi; Docket No. 2150 Page 53
NO PAGES: 2 (Including this page)

REMOVAL

DOCKET 2150 PAGE 539

SPRING LAKE APARTMENTS

601-372-9966

VS.

NEWSOME VOGEL

JUDGMENT 379.50
COSTS 54.00
TOTAL 433.50

FILED 01-17-06

ISSUED 01-17-06

RETURN 01-27-06

CONSTABLE JON C. LEWIS

Deney Continuance
12-27-06
W. Stevens

JUDGEMENT FOR PLAINTIFF

1-27-06

Attorney for Plaintiff

W. Stevens

Attorney for Defendant

JCVENV1

STATE OF MISSISSIPPI
COUNTY OF HINDS

I, Patricia Woods, Clerk of the Justice Court in and for the said State and County, do hereby certify that the above and foregoing is a true and correct copy of the original document and the same is on record in this office in Book 2180 Page 539
Given under my hand and the seal of the Justice Court this the 30 day of Jan 2006

PATRICIA WOODS, Justice Court Clerk

By

EXHIBIT "23"

Police Officer Academy

Mississippi Police Academies, Law Enforcement and Criminal Justice Training Centers

MISSISSIPPI BOARD ON LAW ENFORCEMENT OFFICER STANDARDS AND TRAINING

401 North West Street 8th Floor
Jackson, Mississippi 39201
Phone: 601-359-7880
Fax: 601-359-7832

MISSISSIPPI LAW ENFORCEMENT OFFICERS TRAINING ACADEMY

3791 Highway 468 West
Pearl, Mississippi 39208
Phone: 601-933-2100
Fax: 601-933-2200

MISSISSIPPI DELTA

Exhibit "22"

COMMUNITY COLLEGE LAW ENFORCEMENT TRAINING ACADEMY

Highway 3
Post Office Box 668
Moorhead, Mississippi 38761
Phone: 662-246-6436
Fax: 662-246-6469

NORTH MISSISSIPPI LAW ENFORCEMENT TRAINING ACADEMY

1 Finney Lane
Tupelo, Mississippi 38801
Phone: 601-840-6400
Fax: 601-841-6434

WILLIAM L. SKINNER TRAINING ACADEMY

3000 Saint Charles St
Jackson, Mississippi 39209
Phone: 601-960-1378
Fax: 601-960-1376

Return to Police Officer Academy Directory

The Officer Down Memorial Page, Inc.
Remembering all of law enforcement's heroes

Lieutenant William Louis Skinner

Jackson Police Department
Mississippi
End of Watch: Thursday, August 19, 1971
Cause: Gunfire

Biographical Info
Age: 36
Tour of Duty: 11 years
Badge Number: Not available

Lieutenant William Skinner was shot and killed during a standoff with a group of militants who were barricaded in a house. Lieutenant Skinner was standing beneath a tree when he was struck in the head by a single round that had been fired from underneath the house.

Another Jackson officer and a Federal Bureau of Investigation agent were also wounded during the shootout.

Eleven suspects were arrested and charged with Lieutenant Skinner's murder. Only a few of the suspects were convicted and sentenced to very short sentences.

Lieutenant Skinner had served with the agency for 11 years. He was survived by three sons, all of whom became law enforcement officers.

The Black Liberation Army was a violent, radical group that attempted to fight for independence from the United States government in the late 1960's and early 1970's. The BLA was responsible for the murders of more than 10 police officers around the country. They were also responsible for violent attacks around the country that left many police officers wounded.

Visit Lieutenant Skinner's memorial at www.ODMP.org

EXHIBIT "4"

A record of Judicial Success

Judge William L. (Bill) Skinner County Court

Voting Precincts

William (Bill) Louis Skinner II
205 Huntly Drive
Raymond, Mississippi 39154
(601) 372-5722 hm (601) 720-4861 cell

Resume.pdf

EDUCATION

Jackson State University, Jackson, Mississippi
Ph. D. Public Policy and Administration Program,
Presently Enrolled, Currently writing Dissertation.

Mississippi College School of Law, Jackson, Mississippi
Doctor of Jurisprudence, December, 1998
*Member of MS Bar Association #99397
*Admitted to practice before all State and Federal Courts

Mississippi College, Clinton, Mississippi
Graduate School - **Masters in Social Science**, August, 1995
MAJOR: Administration of Justice
MINORS: History and Sociology

Bachelor of Science Degree in Psychology, August, 1994
MINOR: Criminal Justice

Hinds Community College, Raymond, Mississippi
Associate in Science Degree, 1990

William Louis Skinner Police Academy, Jackson, Mississippi
Certified Law Enforcement Officer, 1980

EXPERIENCE

December 1, 2000-Present

EXHIBIT "20"

HINDS COUNTY JUSTICE COURT JUDGE, District Four, Elected November 22, 2000; Reelected November 4, 2003

December 1, 1999-Present
SKINNER & ASSOCIATES, LLC, Raymond, Mississippi Senior Attorney specializing in Family Law and Involuntary Drug and Alcohol Committals

June 7, 1999-December 1, 1999
GARDNER AND GRANT, LLC - ATTORNEYS AT LAW, Jackson, Mississippi Associate Attorney specializing in General Law

September 1980-May 1994 JACKSON POLICE DEPARTMENT (JPD), Jackson, Mississippi Precinct 1 (3 years), Precinct 3 (7 years), JPD Training Academy as an Instructor (4 years), Pistol Team (2 years), Primary Door Entry Person for JPD SWAT Team (13 years with 9 years as Trainer) **Injured in the line of duty on August 31, 1992; Medical Retirement on May 31, 1994.**

PROFESSIONAL ORGANIZATIONS:

*** Mississippi Justice Court Judges Association - President 2005-2006 & 2006-2007**

*** The National Judges Association**

*** Mississippi Center for Police and Sheriffs - President and Chairman of the Board**

*** Mississippi Bar**

*** Hinds County Bar Association**

*** National Rifle Association**

AWARDS
*Two Distinguished Service Stars

*Nominated for Billy Hickman Award

*Nominated four times for Officer of the Month

*Former Board of Directors State SWAT Association

*Former Second Vice President of Jackson Police Officers Association

*NRA Distinguished Expert

*First Degree Black Belt - Tae Kwon Do America, Clinton, MS

POST GRADUATE EDUCATION

***Spring Judicial Training 2006 - University of Mississippi**

***Landlord/Tenant-2006-Lorman Education Services**

***Handling DUI Cases-2006-University of Mississippi Judicial College**

***Summer Judicial Training-2005-University of Mississippi Judicial College**

***National Judicial Conference-2005-National Judges Association**

***Landlord/Tenant-2005-Lorman Education Services**

***Spring Judicial Training-2005-University of Mississippi Judicial College**

***Fall Judicial Training-2004-University of Mississippi Judicial College**

***Summer Judicial Training-2004-University of Mississippi Judicial College**

***Domestic Violence Seminar - 2004 - The National Judicial College**

***Spring Judicial Training-2004-University of Mississippi Judicial College**

*Fall Judicial Training-2003-University of Mississippi Judicial College

*Strategies In Handling DUI Cases In Mississippi-August 2003-Lorman Education Services

*Summer Judicial Training-2003-University of Mississippi Judicial College

*Debt Collection from Start to Finish in Mississippi-June 2003-National Business Institute

*Evictions and Landlord/Tenant Law in Mississippi-May 2003-National Business Institute

*Spring Judicial Training-2003-University of Mississippi Judicial College

*Domestic Violence: Intervention and Investigation-2002- National Sheriff's
Association in collaboration with The National Training Center on

Domestic and
Sexual Violence *Police Liability in Mississippi-2002-Continuing Legal Education

*Fall Judicial Training-2002-University of Mississippi Judicial College

*Summer Judicial Training-2002-University of Mississippi Judicial College

*Mississippi Foreclosure and Repossession-2002-Continuing Legal Education

*Spring Judicial Training-2002-University of Mississippi Judicial College

*Collection Law in Mississippi-2002-Continuing Education

*Landlord-Tenant update seminar-2001-Continuing Education

*Fall Judicial Training-2001-University of Mississippi Judicial College

*Summer Judicial Training-2001-University of Mississippi Judicial College

*Spring Judicial Training-2001-University of Mississippi Judicial College

*Summary of Recent Mississippi Law-2000-Continuing Education, University of Mississippi

*Police Liability-1999-Continuing Education, Mississippi College

*Basic Mediation Skills Training-1999-The Accord Institute

*Child Advocacy Issues in Mississippi-1999-Mississippi College School of Law

*Basic Homicide Investigation-1999-Continuing Education, Mississippi College

SPECIAL SCHOOLS
*Professional Certification - MS Law Enforcement Officer
*SWAT Training FBI
*Stress Management - Mississippi College
*Officer Survival, Tactics for Armed Encounters -JPOA
*Tactical Police Driving - National Academy for Profession Driving
*Driver Training Instructor - BLEOST

*Criminal Profiling - JPTA
*NRA Firearms Instructor
*Georgia POST Instructor Training Certification
*Crisis Management - FBI
*Interrogation School - JPTA
*Instructor Course - Police Impact Weapons - JPTA
*Emergency Vehicle Operation Instructor Certification
*First Responders Radiological Transportation Emergency Certification
*Radiological Emergency Trainer's Certification
*Gang Suppression Training Conference
*FBI Defensive Tactics Instructor Certification
*Semi-Automatic Weapon - FBI/JPTA
*Advanced SWAT Training - John Shaws Military School
*Advanced SWAT Training - JPTA
*Body Bunker School - ATF
*Pistol Transition for Instructors - FBI
*Police Supervision - IPTM
*Officer Survival - Vehicle Stop Tactics - JPTA
*Handcuffing Techniques - JPTA
*Gang Awareness Seminar - JPTA
*United States Army Executive and Witness Protection
*PPCT Impact Weapons System Instructor Certification
*PPCT Side Handle Baton Instructor

TEACHING EXPERIENCE

***Recognizing Domestic Violence for Law Enforcement, Hinds County Sheriff's Department/Domestic Violence Coalition**

***Domestic Violence Training for Judges, University of Mississippi Judicial College**

*Police Rights and Responsibilities Graduate Course at Mississippi College, Clinton, Mississippi

*Criminal Law Course at Mississippi College, Clinton, Mississippi

*Graduate Assistant at Mississippi College, Clinton, Mississippi

*Trained Hinds County Sheriff's Department Special Response Team

*Trained Clinton's STAR Team

*Self Defense and Public Awareness at Mississippi Baptist Medical Center

*Self Defense and Public Awareness for Continuing Education Department, Mississippi College

PUBLISHED WORK

*Assisted in the draft of a Victim's Handbook for the Crime Victim Compensation Program for the State of Mississippi
*Assisted the Mississippi Coalition Against Domestic Violence in drafting legislation to amend §99-3-7, Mississippi Code of 1972, to revise the domestic violence provisions of the warrant less arrest statute, which took effect July 1, 2002

PERSONAL DATA

Date of Birth: February 9, 1959: Married with three children

Active member of Wynndale Baptist Church

Committee to Elect William L. "Bill" Skinner to Hinds County Court Louie Brooks, CPA, Treasurer (601-373-0073) P.O. Box 1208 Raymond, Mississippi 39154 601-372-5722 skin2221@bellsouth.net

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

January 24, 2008

Mr. Vogel Newsome
Post Office Box 14731
Cincinnati, OH 45250

Dear Mr. Newsome:

This letter is in response to your correspondence addressed to the FBI.

As the FBI previously advised you in our September 5, 2007, response, the matters that you have brought to our attention do not warrant any action by the FBI. You may wish to pursue these issues with the assistance of an attorney.

Sincerely yours,

Carlton L. Peeples/arc

Carlton L. Peeples
Chief, Civil Rights Unit
Criminal Investigative Division

EXHIBIT "19"

220	HINDS COUNTY, MS	msndce	4:1995cv00020	01/25/1995	550	02/16/1996
221	HINDS COUNTY, MS	msndce	4:1995cv00021	01/25/1995	550	07/17/1996
222	HINDS COUNTY, MS	msndce	4:1995cv00023	01/25/1995	550	09/06/1996
223	HINDS COUNTY, MS	msndce	4:1995cv00027	01/25/1995	550	07/17/1996
224	HINDS COUNTY, MS	msndce	4:1995cv00029	01/26/1995	550	07/17/1996
225	HINDS COUNTY, MS	msndce	4:1995cv00040	08/12/1996	550	04/10/2000
255	HINDS COUNTY, MISSISSIPPI	msndce	4:1995cv00022	01/26/1995	550	05/29/1996
256	HINDS COUNTY, MISSISSIPPI	txsdce	1:1995cv00049	03/27/1995	422	02/19/1998
257	HINDS COUNTY, MISSISSIPPI	mssdce	3:2007cv00099	02/14/2007	360	.
258	HINDS COUNTY, MISSISSIPPI	mssdce	3:2004cv00128	02/23/2004	440	01/10/2007
259	HINDS COUNTY, MISSISSIPPI	mssdce	3:2000cv00138	02/22/2000	555	04/05/2001
260	HINDS COUNTY, MISSISSIPPI	mssdce	3:2002cv00186	02/28/2002	555	02/28/2003
261	HINDS COUNTY, MISSISSIPPI	mssdce	3:1997cv00194	03/21/1997	555	12/23/1997
262	HINDS COUNTY, MISSISSIPPI	mssdce	3:1995cv00280	05/22/1995	890	03/28/1996
263	HINDS COUNTY, MISSISSIPPI	mssdce	3:2007cv00289	05/23/2007	440	,
264	HINDS COUNTY, MISSISSIPPI	mssdce	3:1996cv00320	04/25/1996	440	07/30/1996
265	HINDS COUNTY, MISSISSIPPI	mssdce	3:2007cv00359	06/25/2007	555	,
266	HINDS COUNTY, MISSISSIPPI	mssdce	3:2002cv00437	05/06/2002	555	05/23/2002
267	HINDS COUNTY, MISSISSIPPI	mssdce	3:2002cv00472	05/16/2002	555	06/12/2002
268	HINDS COUNTY, MISSISSIPPI	mssdce	3:2005cv00493	08/10/2005	550	07/21/2006
269	HINDS COUNTY, MISSISSIPPI	mssdce	3:1995cv00508	07/19/1995	440	04/03/1996
270	HINDS COUNTY, MISSISSIPPI	mssdce	3:1996mc00531	08/06/1996	440	10/24/1996
271	HINDS COUNTY, MISSISSIPPI	mssdce	3:2006cv00567	10/11/2006	440	12/13/2006
272	HINDS COUNTY, MISSISSIPPI	mssdce	3:2006cv00573	10/12/2006	440	
273	HINDS COUNTY, MISSISSIPPI	mssdce	3:2007cv00592	10/04/2007	442	
274	HINDS COUNTY, MISSISSIPPI	mssdce	3:2007cv00599	10/09/2007	360	
275	HINDS COUNTY, MISSISSIPPI	mssdce	3:1996cv00613	08/15/1996	550	08/20/1997
276	HINDS COUNTY, MISSISSIPPI	mssdce	3:1998cv00675	10/15/1998	440	01/11/2000
277	HINDS COUNTY, MISSISSIPPI	mssdce	3:2007cv00714	12/06/2007	440	
278	HINDS COUNTY, MISSISSIPPI	mssdce	3:2000cv00742	10/02/2000	710	03/01/2002
279	HINDS COUNTY, MISSISSIPPI	mssdce	3:1996cv00780	10/22/1996	440	01/30/1998
280	HINDS COUNTY, MISSISSIPPI	mssdce	3:1997cv00792	11/03/1997	555	05/15/1998
281	HINDS COUNTY, MISSISSIPPI	mssdce	3:2003cv00793	06/10/2003	555	09/07/2004
282	HINDS COUNTY, MISSISSIPPI	mssdce	3:1999cv00860	12/03/1999	440	07/26/2001
283	HINDS COUNTY, MISSISSIPPI	mssdce	3:2001cv00944	12/05/2001	442	08/18/2003
284	HINDS COUNTY, MISSISSIPPI	mssdce	3:2000cv00946	12/11/2000	555	03/31/2004
285	HINDS COUNTY, MISSISSIPPI	mssdce	3:2003cv01137	09/29/2003	440	05/20/2005
286	HINDS COUNTY, MISSISSIPPI	mssdce	3:2003cv01351	12/17/2003	555	11/30/2004

EXHIBIT "18"

289	HINDS COUNTY, MS.	mssdce	3:1996cv00863	11/27/1996	360	01/30/1998
290	HINDS COUNTY, MS.	mssdce	3:2004cv00934	12/23/2004	555	02/04/2005
291	HINDS COUNTY, MS.	mssdce	3:2002cv01078	06/21/2002	440	12/23/2003
292	HINDS COUNTY, MS.	mssdce	3:2003cv01189	10/16/2003	440	03/27/2006
293	HINDS COUNTY, MS.	mssdce	3:2002cv01379	08/21/2002	555	12/10/2002
294	HINDS COUNTY, MS.	mssdce	3:2002cv01699	11/20/2002	555	07/15/2003
295	HINDS COUNTY, MS.	mssdce	3:2000cv00037	01/18/2000	555	05/22/2000
296	HINDS COUNTY, MS.	mssdce	3:2005cv00043	01/18/2005	355	05/06/2005
297	HINDS COUNTY, MS.	mssdce	3:1999cv00096	02/02/1999	555	04/23/1999
298	HINDS COUNTY, MS.	mssdce	3:1999cv00112	02/10/1999	555	12/30/1999
299	HINDS COUNTY, MS.	mssdce	3:2007cv00154	03/19/2007	440	
300	HINDS COUNTY, MS.	mssdce	3:2002cv00219	03/07/2002	360	04/24/2003
301	HINDS COUNTY, MS.	mssdce	3:2007cv00348	06/19/2007	555	
302	HINDS COUNTY, MS.	mssdce	3:2004cv00352	05/13/2004	355	09/15/2006
303	HINDS COUNTY, MS.	mssdce	3:2004cv00353	05/13/2004	365	08/26/2004
304	HINDS COUNTY, MS.	mssdce	3:1999cv00396	06/09/1999	555	07/19/1999
305	HINDS COUNTY, MS.	mssdce	3:2004cv00401	05/28/2004	530	07/26/2004
306	HINDS COUNTY, MS.	mssdce	3:1994cv00463	08/04/1994	550	01/31/1995
307	HINDS COUNTY, MS.	mssdce	3:2000cv00597	08/14/2000	440	06/26/2003
308	HINDS COUNTY, MS.	mssdce	3:2000cv00622	08/22/2000	555	05/12/2003
309	HINDS COUNTY, MS.	mssdce	3:1999cv00639	09/17/1999	555	09/21/1999
310	HINDS COUNTY, MS.	mssdce	3:2001cv00641	08/23/2001	440	08/19/2003
311	HINDS COUNTY, MS.	mssdce	3:1999cv00653	09/22/1999	555	07/19/2001
312	HINDS COUNTY, MS.	mssdce	3:1999cv00654	09/22/1999	555	02/04/2000
313	HINDS COUNTY, MS.	mssdce	3:1997cv00661	09/11/1997	555	06/10/1998
314	HINDS COUNTY, MS.	mssdce	3:1999cv00675	09/29/1999	555	05/03/2000
315	HINDS COUNTY, MS.	mssdce	3:1999cv00676	09/29/1999	555	03/23/2000
316	HINDS COUNTY, MS.	mssdce	3:1992cv00677	10/23/1992	440	03/04/1993
317	HINDS COUNTY, MS.	mssdce	3:2001cv00685	09/05/2001	710	02/28/2002
318	HINDS COUNTY, MS.	mssdce	3:2001cv00713	09/19/2001	555	10/16/2001
319	HINDS COUNTY, MS.	mssdce	3:2000cv00781	10/23/2000	440	06/29/2001
320	HINDS COUNTY, MS.	mssdce	3:2000cv00782	10/23/2000	440	02/25/2004
321	HINDS COUNTY, MS.	mssdce	3:2003cv00792	06/10/2003	530	09/23/2003

	Name	Court	Case No.	Filed	NOS	Closed
1	MCMILLIN, MALCOLM	msndce	4:1996cv00024	01/19/1996	550	06/12/1997
	Hall v. McMillin, et al					
2	MCMILLIN, MALCOLM	mssdce	3:2008cv00066	02/04/2008	555	
	Edmonson v. Wilson Auto Inc. et al					
3	MCMILLIN, MALCOLM	mssdce	3:2006cv00316	06/12/2006	555	11/17/2006
	Dishmon v. Hinds County Sheriff's Department					
4	MCMILLIN, MALCOLM	mssdce	3:2007cv00514	08/30/2007	555	
	Lewis v. McMillin et al					
5	MCMILLIN, MALCOLM	mssdce	3:2006cv00575	11/02/2006	555	
	Washington v. McMillin et al					
6	MCMILLIN, MALCOLM	mssdce	3:2006cv00600	10/25/2006	555	01/15/2008
	Moore v. McMillin et al					
7	MCMILLIN, MALCOLM	mssdce	3:2005cv00614	10/11/2005	110	03/29/2006
	His Way, Inc. et al v. United States Liability Insurance Company					
8	MCMILLIN, MALCOLM	mssdce	3:2006cv00666	11/30/2006	555	12/11/2007
	Kelly v. McMillin et al					
9	MCMILLIN, MALCOLM	mssdce	3:2006cv00667	11/30/2006	550	09/19/2007
	Brown v. McMillin et al					
10	MCMILLIN, MALCOLM	mssdce	3:2007cv00677	11/19/2007	555	
	Fox v. Hinds County Board of Supervisors et al					
11	MCMILLIN, MALCOLM E.	mssdce	3:1980cv00008	06/09/1993	440	09/12/1996
	Wilson v. City of Jackson, et al					
12	MCMILLIN, MALCOLM E.	mssdce	3:2001cv00010	10/06/2003	440	05/25/2004
	Sturges Estate v. Moore, et al					
13	MCMILLIN, MALCOLM E.	mssdce	3:1995cv00016	01/06/1995	550	03/23/1995
	Joseph v. McMillin					
14	MCMILLIN, MALCOLM E.	msndce	4:1995cv00020	01/25/1995	550	02/16/1996
	Davis v. McMillin, et al					
15	MCMILLIN, MALCOLM E.	msndce	4:1995cv00021	01/25/1995	550	07/17/1996
	Taylor v. McMillin, et al					
16	MCMILLIN, MALCOLM E.	msndce	4:1995cv00022	01/26/1995	550	05/29/1996
	Kolberg v. McMillin, et al					
17	MCMILLIN, MALCOLM E.	msndce	4:1995cv00023	01/25/1995	550	09/06/1996
	Davis, et al v. McMillin, et al					
18	MCMILLIN, MALCOLM E.	mssdce	3:2005cv00024	02/16/2005	555	05/31/2005
	Austin v. McMillin et al					
19	MCMILLIN, MALCOLM E.	msndce	4:1995cv00027	01/25/1995	550	07/17/1996
	Snelson v. McMillin, et al					

20 MCMILLIN, MALCOLM E. msndce 4:1995cv00029 01/26/1995 550 07/17/1996
Cole v. McMillin, et al
21 MCMILLIN, MALCOLM E. msndce 4:1995cv00040 08/12/1996 550 04/10/2000
Pinkney v. McMillin, et al
22 MCMILLIN, MALCOLM E. mssdce 3:2001cv00060 01/31/2001 555 05/29/2002
Brown v. McMillin, et al
23 MCMILLIN, MALCOLM E. mssdce 3:1995cv00066 02/08/1995 550 09/19/1995
Stringer v. McMillin, et al
24 MCMILLIN, MALCOLM E. mssdce 3:2000cv00079 02/02/2000 555 04/18/2000
Burton v. Hinds Co. Sheriff, et al
25 MCMILLIN, MALCOLM E. mssdce 3:1996cv00088 02/06/1996 550 03/23/1998
Tucker v. McMillin, et al
26 MCMILLIN, MALCOLM E. mssdce 3:1995cv00102 03/01/1995 530 08/12/1996
Stringer v. McMillin
27 MCMILLIN, MALCOLM E. mssdce 3:2005cv00108 02/16/2005 440 06/07/2005
Gibson v. McMillin et al
28 MCMILLIN, MALCOLM E. mssdce 3:1999cv00112 02/10/1999 555 12/30/1999
Williamson v. Hinds County, et al
29 MCMILLIN, MALCOLM E. mssdce 3:1996cv00113 02/14/1996 550 01/31/1997
Martin v. Hinds County, et al
30 MCMILLIN, MALCOLM E. mssdce 3:2000cv00118 02/16/2000 555 05/16/2000
Putnman v. McMillin, et al
31 MCMILLIN, MALCOLM E. mssdce 3:1992cv00119 02/26/1992 550 01/05/1994
Williams v. McMillan, et al
32 MCMILLIN, MALCOLM E. mssdce 3:1998cv00122 02/09/1998 440 02/11/2000
Campbell v. McMillin, et al
33 MCMILLIN, MALCOLM E. mssdce 3:2000cv00138 02/22/2000 555 04/05/2001
Ray v. McMillin, et al
34 MCMILLIN, MALCOLM E. mssdce 3:1995cv00146 03/21/1995 530 04/12/1995
Sivori v. McMillin
35 MCMILLIN, MALCOLM E. mssdce 3:2007cv00154 03/19/2007 440
Bolden v. McMillin et al
36 MCMILLIN, MALCOLM E. mssdce 3:1995cv00171 04/03/1995 550 11/27/1995
Stringer v. McMillin, et al
37 MCMILLIN, MALCOLM E. mssdce 3:2006cv00175 04/11/2006 555 09/28/2007
Wilson v. McMillin et al
38 MCMILLIN, MALCOLM E. mssdce 3:2000cv00179 03/06/2000 530 01/11/2001
Mosley v. McMillin, et al
39 MCMILLIN, MALCOLM E. mssdce 3:1995cv00194 04/19/1995 440 08/02/1995

Harvey v. McMillin, et al
40 MCMILLIN, MALCOLM E. mssdce 3:1997cv00194 03/21/1997 555 12/23/1997
Lloyd v. Hinds County, et al
41 MCMILLIN, MALCOLM E. mssdce 3:1995cv00206 04/21/1995 550 12/16/1996
Walker v. McMillin, et al
42 MCMILLIN, MALCOLM E. mssdce 3:1995cv00210 04/24/1995 550 11/27/1995
Thompson v. McMillin, et al
43 MCMILLIN, MALCOLM E. mssdce 3:1999cv00265 04/15/1999 555 08/19/1999
McNair v. Hinds County, et al
44 MCMILLIN, MALCOLM E. mssdce 3:1996cv00273 04/11/1996 550 06/20/1996
Stimage v. McMillin, et al
45 MCMILLIN, MALCOLM E. mssdce 3:1995cv00274 05/17/1995 550 11/27/1995
Thompson v. McMillin, et al
46 MCMILLIN, MALCOLM E. mssdce 3:2005cv00280 05/05/2005 555 06/28/2005
McDowell v. Hunt et al
47 MCMILLIN, MALCOLM E. mssdce 3:1998cv00284 04/20/1998 555 11/20/1998
Evans v. McMillin, et al
48 MCMILLIN, MALCOLM E. mssdce 3:1993cv00287 06/18/1993 550 03/30/1995
Holiday v. McMillin, et al
49 MCMILLIN, MALCOLM E. mssdce 3:1999cv00384 06/04/1999 555 11/22/1999
Harper v. Hinds County, et al
50 MCMILLIN, MALCOLM E. mssdce 3:2004cv00393 05/26/2004 555 12/28/2005
Johnson v. Hinds County Board, et al
51 MCMILLIN, MALCOLM E. mssdce 3:1999cv00404 06/10/1999 442 08/29/2000
Thompson v. Hinds Co. Sheriff, et al
52 MCMILLIN, MALCOLM E. mssdce 3:2000cv00454 06/15/2000 555 11/15/2000
Gross v. McMillin
53 MCMILLIN, MALCOLM E. mssdce 3:1994cv00457 08/03/1994 550 11/21/1994
Henderson, et al v. McMillin
54 MCMILLIN, MALCOLM E. mssdce 3:1995cv00466 06/30/1995 550 03/05/1996
Sheriff v. McMillin, et al

	Name	Court	Case No.	Filed	NOS	Closed
55	MCMILLIN, MALCOLM E.	mssdce	3:1995cv00508	07/19/1995	440	04/03/1996
	Clark v. McMillin, et al					
56	MCMILLIN, MALCOLM E.	mssdce	3:1994mc00515	12/08/1994	550	02/08/1995
	Stringer v. McMillin, et al					
57	MCMILLIN, MALCOLM E.	mssdce	3:1994cv00525	08/30/1994	550	11/17/1994
	Ramage v. McMillin, et al					
58	MCMILLIN, MALCOLM E.	mssdce	3:1995cv00535	08/01/1995	550	08/30/1995
	Sivori v. McMillin, et al					
59	MCMILLIN, MALCOLM E.	mssdce	3:2006cv00551	10/04/2006	555	06/18/2007
	Carpenter v. McMillin					
60	MCMILLIN, MALCOLM E.	mssdce	3:1997cv00564	08/07/1997	555	06/01/1998
	Collins v. Thomas, et al					
61	MCMILLIN, MALCOLM E.	mssdce	3:2006cv00567	10/11/2006	440	12/13/2006
	Bolden v. McMillin et al					
62	MCMILLIN, MALCOLM E.	mssdce	3:2000cv00584	08/07/2000	555	10/31/2002
	Arnold v. McMillin, et al					
63	MCMILLIN, MALCOLM E.	mssdce	3:2000cv00585	08/07/2000	555	10/23/2000
	Gross v. McMillin, et al					
64	MCMILLIN, MALCOLM E.	mssdce	3:2000cv00586	08/07/2000	555	10/23/2000
	Bingham v. McMillin, et al					
65	MCMILLIN, MALCOLM E.	mssdce	3:2007cv00599	10/09/2007	360	
	Burnley v. Hinds County, Mississippi et al					
66	MCMILLIN, MALCOLM E.	mssdce	3:1999cv00602	08/30/1999	555	02/29/2000
	Ramsey v. Smith, et al					
67	MCMILLIN, MALCOLM E.	mssdce	3:1996cv00613	08/15/1996	550	08/20/1997
	Williamson v. Hinds County, et al					
68	MCMILLIN, MALCOLM E.	mssdce	3:1992cv00617	09/30/1992	550	03/31/1993
	Stringer, et al v. McMillin, et al					
69	MCMILLIN, MALCOLM E.	mssdce	3:1996cv00622	08/16/1996	550	08/20/1997
	Williamson, et al v. County of Hinds, et al					
70	MCMILLIN, MALCOLM E.	mssdce	3:1994cv00650	11/04/1994	550	01/23/1995
	Kolberg v. McMillin, et al					
71	MCMILLIN, MALCOLM E.	mssdce	3:1994cv00662	11/08/1994	550	01/20/1995
	Davis v. McMillin, et al					
72	MCMILLIN, MALCOLM E.	mssdce	3:1994cv00664	11/08/1994	550	01/20/1995
	Snelson v. McMillin, et al					
73	MCMILLIN, MALCOLM E.	mssdce	3:1994cv00665	11/08/1994	550	01/20/1995

Davis v. McMillin, et al
74 MCMILLIN, MALCOLM E. mssdce 3:1994cv00666 11/08/1994 550 01/20/1995
Cole v. McMillin, et al
75 MCMILLIN, MALCOLM E. mssdce 3:1994cv00667 11/08/1994 550 01/25/1995
Pinkney v. McMillin, et al
76 MCMILLIN, MALCOLM E. mssdce 3:1994cv00668 11/08/1994 550 01/20/1995
Taylor v. McMillin, et al
77 MCMILLIN, MALCOLM E. mssdce 3:1999cv00675 09/29/1999 555 05/03/2000
Curtis v. Hinds County, Ms., et al
78 MCMILLIN, MALCOLM E. mssdce 3:2001cv00685 09/05/2001 710 02/28/2002
Allen, et al v. Hinds County, Ms., et al
79 MCMILLIN, MALCOLM E. mssdce 3:2007cv00691 11/27/2007 555
Smith v. McMillin et al
80 MCMILLIN, MALCOLM E. mssdce 3:1999cv00708 10/08/1999 555 09/19/2000
Levy v. Hinds Co. Detention, et al
81 MCMILLIN, MALCOLM E. mssdce 3:1998cv00723 11/06/1998 555 06/02/1999
Sheppard v. Hinds County Board, et al
82 MCMILLIN, MALCOLM E. mssdce 3:2000cv00742 10/02/2000 710 03/01/2002
Palmer, et al v. Hinds County, et al
83 MCMILLIN, MALCOLM E. mssdce 3:1993cv00750 11/24/1993 550 03/11/1994
Hollins v. McMillin, et al
84 MCMILLIN, MALCOLM E. mssdce 3:1993cv00766 12/02/1993 550 03/11/1994
Lewis v. McMillin, et al
85 MCMILLIN, MALCOLM E. mssdce 3:1995cv00773 10/19/1995 550 10/02/1996
Robinson v. Wyatt, et al
86 MCMILLIN, MALCOLM E. mssdce 3:1995cv00775 10/20/1995 550 12/16/1996
Coleman v. Doe, et al
87 MCMILLIN, MALCOLM E. mssdce 3:1995cv00778 10/20/1995 550 05/31/1996
Coleman v. Winn, et al
88 MCMILLIN, MALCOLM E. mssdce 3:1996cv00780 10/22/1996 440 01/30/1998
Beard v. McMillin, et al
89 MCMILLIN, MALCOLM E. mssdce 3:2000cv00781 10/23/2000 440 06/29/2001
Taylor v. Hinds County, Ms., et al
90 MCMILLIN, MALCOLM E. mssdce 3:1995cv00791 10/26/1995 550 05/31/1996
Coleman v. McMillin, et al
91 MCMILLIN, MALCOLM E. mssdce 3:1997cv00792 11/03/1997 555 05/15/1998
Daniels v. Hinds County, et al
92 MCMILLIN, MALCOLM E. mssdce 3:1999cv00792 11/15/1999 555 08/31/2001
Thomas, et al v. Hinds Co. Sheriff, et al

93 MCMILLIN, MALCOLM E. mssdce 3:1999cv00793 11/15/1999 555 03/03/2000
Thomas v. Hinds Co. Sheriff, et al
94 MCMILLIN, MALCOLM E. mssdce 3:1998cv00794 12/18/1998 555 03/08/2001
Luckett v. McMillin, et al
95 MCMILLIN, MALCOLM E. mssdce 3:1999cv00805 11/19/1999 555 03/15/2001
Mosley v. McMillin, et al
96 MCMILLIN, MALCOLM E. mssdce 3:2003cv00805 06/13/2003 320 01/11/2005
Saulters v. McMillin, et al
97 MCMILLIN, MALCOLM E. mssdce 3:1993cv00821 12/28/1993 550 03/25/1994
Lewis v. McMillin, et al
98 MCMILLIN, MALCOLM E. mssdce 3:2001cv00848 11/01/2001 555 06/04/2003
Wilson v. Hinds County Board, et al
99 MCMILLIN, MALCOLM E. mssdce 3:1999cv00860 12/03/1999 440 07/26/2001
Aujla v. Hinds County, et al
100 MCMILLIN, MALCOLM E. mssdce 3:1996cv00863 11/27/1996 360 01/30/1998
Beard, et al v. McMillin, et al
101 MCMILLIN, MALCOLM E. mssdce 3:1996cv00865 11/29/1996 550 06/11/1997
Jackson v. Hinds County Board, et al
102 MCMILLIN, MALCOLM E. mssdce 3:2001cv00944 12/05/2001 442 08/18/2003
Anderson v. Hinds Co. Sheriff, et al
103 MCMILLIN, MALCOLM E. mssdce 3:2004cv00983 12/10/2004 555 02/07/2006
Simmons v. McMillin, et al
104 MCMILLIN, MALCOLM E. mssdce 3:2003cv01008 08/19/2003 530 09/17/2003
Morris v. McMillin, et al
105 MCMILLIN, MALCOLM E. mssdce 3:2003cv01017 08/21/2003 555 02/19/2004
Mosley, et al v. Jones, et al

Ex-Republic of New Africa leader denounced as terrorist, praised as role model

By Jack Mazurak
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Brian Albert Broome

Judge William Skinner today criticized Jackson Councilman Kenneth Stokes for inviting convicted felon Imari Obadele to speak at Jackson's City Hall and Jackson attorney Chokwe Lumumba for supporting the action. Obadele, the former leader of the Republic of New Africa, was convicted of conspiracy in the 1971 slaying of Skinner's father, Jackson police Lt. William Louis Skinner.

Former Republic of New Africa president Imari Obadele, who served time for conspiracy in the 1971 slaying of Jackson police Lt. William Louis Skinner, was described today as terrorist by the officer's son.

In another meeting, he was lauded as a role model by Jackson City Council member Kenneth Stokes, who is hosting Obadele tonight during a Black History Month speech at Jackson City Hall.

Obadele appeared this morning at the Jackson City Council's regular meeting, signing up to speak before the panel as regular citizens are allowed to do.

Obadele said the RNA is a peaceful group, not a terrorist organization, that wanted to establish an independent country that included Mississippi.

"We were in our house, and police and the FBI ... attacked us," he said, referring to the August 1971 shootout between law enforcement officers and RNA members that resulted in Skinner's death.

But minutes before Obadele spoke to the council, Hinds County Justice Court Judge Bill Skinner blasted the former RNA leader and Stokes.

Obadele had as much told Lt. William Louis Skinner that he was going to kill him, Skinner's son said.

"This man is a terrorist," Bill Skinner said. "He ran a terrorist organization, and there is no difference between him and Osama bin Laden."

He chastised Jackson Mayor Harvey Johnson Jr. and the council members who did not speak out against Obadele.

"I'm mad as hell, and I'm not going to take this crap," Bill Skinner said.
Only two council members, Ben Allen and Marshand Crisler, have publicly said Obadele has no place speaking in City Hall.

Allen, on his WJNT-1180 talk-radio show this morning, blasted Stokes for independently bringing Obadele to City Hall.

Obadele's speech tonight at City Hall, an opener for Black History Month, has stirred strife in city officials and community members through the last five days.

Accusations and cutting comments have only become thicker in the hours before his controversial speech.

During the council's 10 a.m. meeting, a face off between both sides roiled emotions. Obadele and local lawyers Chokwe

EXHIBIT "17"

Lumumba and Imhotep Alkebu-lan sat in the front row, about eight feet from the council.

Lumumba said white supremacy is still alive in law enforcement as it was in the 1970s. Referring to Hinds County Sheriff Malcolm McMillin's stance against Obadele's visit, he said white supremacy is alive today, but different.

"Law enforcement is slicker now. We know he (McMillin) has at least one council member here," Lumumba said, referring to Crisler, who sat just to Lumumba's right.

"He wears a black face, but I saw him smiling there with McMillin (Monday at the sheriff's news conference)."

Crisler, Ward 6 councilman, is also a Hinds County Sheriff's Department deputy.

Deliberately extending Lumumba's comment time, Stokes asked him questions, including whether Obadele had visited the council before.

Later in the meeting, Stokes took aim at both McMillin and Allen.

"McMillin lives in Clinton. How can he run things here?" he said. "Ben Allen is the biggest racist I know, but at least he stays in Jackson."

Allen, seated next to Stokes, burst into laughter along with many others in the chamber.

Clinton, where the sheriff lives, is in Hinds County.

A record of
Judicial Success

Voting Precincts

Dear Friends,

It is a great day in Mississippi that our Hinds County Judge, Mike Parker, has been appointed a Federal Judicial Position. I consider it a privilege to have worked so closely with Judge Parker throughout the years. With my years of experience I am in a unique position to step right in and pick up where he left off as Hinds County Court Judge.

Since my first election in 2000, with 72% of the vote and subsequently running unopposed in 2003, I have implemented programs in the Hinds County Justice Court to allow us to bring all our dockets up to date. I was the first Judge to use programs such as alternative sentencing, pre-trial diversion and bond probation, again, values of concern for the citizens of Hinds County and concern for the judicial system as well. I have extended my one-day-a-week court day to include doing initial appearances at the Jail in Raymond to help keep the number of inmates down, as well as saving money on the transportation of prisoners. I have also done initial appearances for the County Court when Judges were unavailable or to help during a busy docket period. As a sitting Hinds County Justice Court Judge, I make more independent civil and criminal decisions than any other court in the State of Mississippi, and I render these decisions according to the letter of the law. My reputation of a hard worker, in my present position, will reflect how hard I will work to do everything it takes to help the law enforcement and judicial systems in Hinds County work.

My entire adult life reflects a special passion for Hinds County's law and judicial system. It has been a privilege for me to serve as a law enforcement officer with the Jackson Police Department, as an attorney with my private practice in Raymond, and a Judge, all in

Hinds County. I am very passionate about making Hinds County a better place, not only for its citizens, but also for my entire family. My life experiences, along with my values and convictions, will bring such an asset to the table for Hinds County Court, and I guarantee that I will work harder than any other to make a difference.

My family and I have put together this web site so you can get to know us, where we've been, and my plans for the future of the Hinds County Court. This web site will also provide information on how you can get involved in this race, and make a difference for our county. We've a lot of ground to cover, and we're going to need as much manpower as possible. I encourage you to get to know us and join our fight to make Hinds County a better place. Thank you for your support, and please keep our family and this campaign in your prayers.

God Bless,

William L. "Bill" Skinner, II

Bill Skinner

Committee to Elect William L. "Bill" Skinner Hinds County Court

Louie Brooks, CPA, Treasurer (601-373-0073)

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COMPLAINT and REQUEST FOR INVESTIGATION
TO THE UNITED STATES DEPARTMENT OF JUSTICE and
FEDERAL BUREAU OF INVESTIGATIONS
FILED BY VOGEL D. NEWSOME
JUNE 26, 2006

Ms. Newsome Vogel Newsome, hereby submit the following Complaint and request an investigation into this matter and that a report of your agency's findings in regards to the issues raised below:

1. On January 23, 2006, a Summons to Tenant issued by the Justice Court of Hinds County was left posted to Ms. Newsome's door. This Summons was in regards to a matter styled *Spring Lake Apartments v. Vogel Newsome*; Docket No. 2150, Page 539. This Summons was to be served by the Constable, Jon Lewis. A copy of the Summons left on Ms. Newsome's door is attached hereto as **Exhibit "A."**

2. On or about January 27, 2006, while at the Justice Court of Hinds County, Ms. Newsome requested a copy of the "Proof of Service" of the Summons to see when and how service was perfected. Ms. Newsome was advised by one of the Justice Court representatives that no "Proof of Service" had been filed and the only document they have was the Summons noting when it posted. A copy of the Summons filed with the Justice Court by Constable Jon Lewis is attached hereto as **Exhibit "B."**

3. Upon review of the copy of the Summons filed with the Justice Court by Constable Jon Lewis, Ms. Newsome noticed that he indicated that the Summons in the Justice Court action was posted on Ms. Newsome's door on January 21, 2006. However, such a statement and/or affirmation is false. The Summons was not posted and/or left for Ms. Newsome until January 23, 2006. **Therefore, Ms. Newsome will need to know when the Summons was actually posted.** There was no Proof of Service filed by Constable Jon Lewis to provide testimony as to how service of said Summons was made on Ms. Newsome. The laws of the State of Mississippi governing said matters require that a Proof of Service/Service of Process, etc. be provided by Constable Jon Lewis. Constable Jon Lewis failed to abide by the laws governing said matters. Furthermore, the laws of the State of Mississippi prohibits the posting of Summons on residents who reside in a multi-family dwelling – Ms. Newsome resided in a multi-family dwelling at the time of the unlawful and illegal violations rendered her. Also, important to note, the posting of Summons for citizens/residents who live in multi-family dwelling can only be used as a *last* resort after diligent efforts have been made to personally serve the person on which Summons is issued.

4. While the copy of the Summons filed by Constable Jon Lewis reflects that it was posted on January 21, 2006 (when in fact it was not); however, left/posted on January 23, 2006, **Ms. Newsome will need to know what happened to the Summons in between January 21, 2006 (if posted then), and January 23, 2006.** If indeed the Summons was posted on that date, then it is apparent that someone ***tampered*** with the Summons Constable Jon Lewis attested to

Exhibit "16"

being posted. If the Summons was not posted as Constable Jon Lewis attested to, then he falsified the information regarding when the Summons was posted. Moreover, there are concerns that Constable Jon Lewis may have ***conspired*** with employee(s) of Spring Lake Apartments to ***obstruct the administration of justice*** and to *deprive* Ms. Newsome *equal protection and due process of laws.* Said actions which are a violation of Ms. Newsome's *constitutional* and *civil rights* as well as other laws governing said matters. Therefore, Ms. Newsome, believes that action taken by Constable Jon Lewis and other(s) was deliberately done to cause her injury and harm.

5. On February 13, 2006, upon returning to her residence, Ms. Newsome had a "Warrant of Removal" left on her door. A Warrant of Removal which cannot be enforced under the laws of Mississippi in that Service of Process was not perfected on Ms. Newsome as required by the laws governing said matters, neither was Proof of Service/Service of Process, etc. to support the steps taken by Constable Jon Lewis filed with Court. Therefore, as a matter of law – in the State of Mississippi – the Justice Court/Judge William Skinner **never** had jurisdiction over the Ms. Newsome or the case filed by Spring Lake Apartments. Neither did Ms. Newsome, as a matter of law, ever waive service of process in this matter. Therefore, any judgment rendered by Judge Skinner/the Justice Court **cannot**, *as a matter of law*, ***be enforced*** and/or ***upheld***.

6. On February 14, 2006, Ms. Newsome timely, properly and adequately notified Spring Lake Apartments that she would be seeking to get an Injunction and Restraining Order against it. Spring Lake Apartments was notified via facsimile. Moreover, Spring Lake Apartments was timely, properly, and adequately notified of the defects, improper and/or unlawful means used in the service of Summons upon Ms. Newsome. Spring Lake Apartments was timely, properly and adequately placed on notice that they should seek legal advice from their attorney regarding their handling the matter against Ms. Newsome. However, Spring Lake Apartments elected to evade the laws and subject Ms. Newsome to the unlawful actions initiated by them.

7. On February 14, 2006, upon returning to her residence, Ms. Newsome found Spring Lake Apartment representatives, Melody Crews and others, along with Constable Jon Lewis and his Assistant, unlawfully and illegally removing her personal possessions from her residence. Ms. Newsome requested that Spring Lake Apartments representatives and Constable Jon Lewis and others cease from their unlawful actions. Moreover, Ms. Newsome provided Constable Jon Lewis with a copy of the Injunction and Restraining Order she had filed with the Courts earlier that day. Ms. Newsome advised Constable Lewis and others that they were violating her rights. To no avail. Constable Lewis and others insisted on proceeding in subjecting Ms. Newsome to further injury and harm. As a direct and proximate result of the actions taken by Constable Jon Lewis and others, Ms. Newsome's Constitutional and Civil Rights were violated, her privacy invaded and items unlawfully and illegally seized and removed.

8. While Ms. Newsome had a right to be at her residence and it was Constable Jon Lewis and others who were in violation of the laws, Constable Jon Lewis told Ms. Newsome to

wait outside. Constable Lewis doing so while conversing with someone on his cell phone. Later Constable Lewis exited the apartment and placed Ms. Newsome under arrest stating she was being arrested for *disorderly conduct*. He proceeded to handcuff and force her into his car where he took her to the Hinds County Detention Center in Raymond, Mississippi.

9. On several occasions Ms. Newsome advised Constable Lewis that he was violating her rights. On several occasions Constable Lewis and others had an opportunity to cease from the unlawful and illegal actions they were subjecting Ms. Newsome to; however, elected not to do so.

10. On February 14, 2006, Ms. Newsome was taken to the Hinds County Detention Center where she was booked. Bond had to be posted before she was released. While in the custody of the Hinds County Detention Center, Ms. Newsome was held against her will, never read her rights, refused a phone call, subjected to very hostile, abusive treatment, threats, shackled in chains (around wrist and ankles), etc. where she sustained further injury and/or harm. Ms. Newsome repeatedly requested to speak to Sheriff McMillan; however, such requests were scoffed, laughed at and/or mocked.

11. This is just a synopsis of some of the unlawful and illegal actions taken against Ms. Newsome. The issues addressed herein are **not** to be taken as *all* of the facts in the matter and ***is not*** to be limited to this information only. Ms. Newsome should be contacted should additional information and/or facts are needed during this investigation.

12. Ms. Newsome request the investigation into Judge William Skinner's handling of this matter. Ms. Newsome has concerns that Judge Skinner knew and/or should have known that he violated the Constitutional Rights, Civil Rights, and other laws governing said matters. Moreover, may have conspired with Constable Jon Lewis and others to subject Ms. Newsome to such unlawful and illegal actions rendered against her.

13. Ms. Newsome has serious beliefs that Judge Skinner may have also knowingly abused and violated that laws relying on his ties to the community and the fact that the "William L. Skinner Training Academy" located in Jackson, Mississippi was named after his late father. See **Exhibit "C"** attached hereto.

14. Ms. Newsome believes that Judge Skinner was also prejudice towards her because she is African-American and educated.

15. It is important to note that Judge Skinner may also be prejudice towards African-Americans that are educated and not lawyers – such belief has been formed based on the conduct, statements and behavior exhibited towards Ms. Newsome by Judge Skinner. Moreover, from research, it appears that Judge Skinner's father was killed during the FBI's raid on the Republic of New Africa in 1971. See **Exhibit "D"** attached hereto. Thus, leaving concerns that Judge Skinner, has become a Judge to seek revenge and hide his racial prejudice and animosity behind the judicial robe he wears.

16. In February 2006, Ms. Newsome filed a Complaint with the Mississippi Commission on Judicial Performance ("MCJP") regarding Judge Skinner. However, to date, the MCJP has failed to produce to Ms. Newsome the information she is requesting regarding its investigation. Ms. Newsome also believes that the MCJP may fail to perform the duties owed to Ms. Newsome because of any favors it may try to render to Judge Skinner out of their relationship and sympathy for his father. Thus, it appears to Ms. Newsome from the unlawful and illegal actions rendered her by Judge Skinner, he is indeed riding and/or playing on the sympathy and his connections to evade justice and the laws governing said matters. Moreover, Ms. Newsome has concerns as to the agency's ability to remain fair and impartial in investigating complaints filed against Judge Skinner, Judge Skinner or others, as such agencies may feel a duty to accommodate such illegal and/or unlawful practices out of guilt for the death of Judge Skinner's father and the need to render him favors to hide/mask such guilt.

17. It is such unlawful actions, such as those rendered against Ms. Newsome, that leaves a bad taste in the mouth of African-Americans that justice is also prejudice and the laws are not equally applied with it involves criminal actions taken by white citizens against African-American citizens. Moreover, white citizens are most likely to be given special treatment because of the color of their skin, economic status, etc., than that of African-Americans.

18. On May 15, 2006, Ms. Newsome was terminated from her place of employment. Her employer, Page Kruger & Holland ("PKH"), advised her that they were contacted by someone and notified of the lawsuit she filed in the County Court of Hinds County. PKH advised Ms. Newsome they verified the filing of the Complaint she filed against Spring Lake Apartments. As a direct and proximate result of Ms. Newsome's filing of the complaint in the Hinds County Court and PKH being notified of said filing, Ms. Newsome's employment with PKH was terminated.

19. It is important to note that during Ms. Newsome's employment with PKH, PKH represented and/or is counsel for Hinds County. Thus, Ms. Newsome believes her employment was terminated as a result that PKH knew that she would be filing legal actions against the Constable, Hinds County and other applicable parties. PKH was notified by Ms. Newsome several months back during a conflict check by PKH, of possible conflict. However, PKH did nothing. It was not until they were contacted and notified of the lawsuit I filed against Spring Lake Apartments that PKH terminated my employment. The action taken by PKH is in furtherance of the conspiracy to deprive Ms. Newsome of Constitutional Rights, Civil Rights and other laws governing said matters. Moreover, PKH's action was done to cause Ms. Newsome further harm and injury because she elected, as a citizen of the United States and the State of Mississippi to pursue the course of justice to correct such injustice/wrongs rendered her.

20. Ms. Newsome believes that she has been subjected to a conspiracy formed by individuals to cause her harm and injury as a direct and proximate result of her exercising her Constitutional Rights, Civil Rights and enforcement of other laws governing said matters.

THEREFORE, Ms. Newsome is requesting that the applicable department of the United States Department of Justice and the Federal Bureau of Investigations investigate the allegations raised in this Complaint and produce to her their findings.

RESPECTFULLY submitted this the **26th** day of **June, 2006**.

Vogel Newsome

Vogel D. Newsome
Post Office Box 31265
Jackson, Mississippi 39286
601/885-9536

SUMMONS TO TENANT

STATE OF MISSISSIPPI
COUNTY OF HINDS

DOCKET 2150 PAGE 539
JON C. LEWIS

TO ANY LAWFUL OFFICER OF HINDS COUNTY :

You are commanded to summon NEWSOME VOGEL

_____, Defendant,

now in possession of the premises at 1434 HAWTHORNE COVE

JACKSON, MS 39272

without the permission of SPRING LAKE APARTMENTS

601-372-9966, Landlord,

and who refuses to vacate said premises or to pay rent due of $ 379.50.

COUNT ONE

To appear and show why possession of said premises should not be delivered to the said Landlord.

COUNT TWO

To appear and answer the suit of the Landlord for rent due in the amount of $ 379.50, together with all costs of Court.

You are to summon said Defendant to appear before the Justice Court of Hinds County at 407 East Pascagoula Street Jackson, Mississippi, at 1:30PM on the 27TH day of JANUARY, 2006.

Witness my hand, this the 17TH day of JANUARY, 2006.

By _____ D.C.

Hinds County Justice Court Clerk
407 East Pascagoula Street - Suite 333
P.O. Box 3490
Jackson, Mississippi 39207
(601) 965-8800

JAN 2 0 2006

HINDS COUNTY JUSTICE COURT CLERK

BY _____ D.C.

NOTICE

YOU ARE BEING SUED. SHOULD YOU FAIL TO APPEAR AND FILE YOUR ANSWER TO SAID SUIT ON OR BEFORE THE DATE SHOWN, A MONEY JUDGMENT BY DEFAULT WILL BE ENROLLED AGAINST YOU.

"A"

AFFIDAVIT TO REMOVE TENANT

Docket 214 Page 39
1-27-06
1:30 pm

STATE OF MISSISSIPPI
HINDS COUNTY

Plaintiff's Name Spring Lake Apartments

Address 1000 Spring Lake Blvd.

City & Zip Code: Jackson, MS 39272

Telephone Number: (601) 372-9966

Before me, the undersigned Justice Court Clerk in Hinds County, Mississippi, Landlord Melody Crews, makes oath to the best of his/her knowledge and belief that Defendant, Vogel Newsome whose telephone number is _____ refuses to deliver possession of the following described property, to wit 1434 Hawthorne Cove Jackson MS 39272 in said County and State; that there is now due from said Defendant the sum of $ 379.50 rent and the necessary notice according to law has been given to terminate such tenancy, and that satisfaction of said rent cannot be obtained by distress of the goods, ware and chattels of the said tenant. The affiant demands:

COUNT ONE That the said Vogel Newsome be removed from the premises.

COUNT TWO That a money judgement for the rent now due in the amount of $ 379.50 plus the rent to become due to the date of removal judgement, be rendered against the said tenants plus all cost in this cause to accrue.

Rent amount to become due: $_____

Melody A Crews
Plaintiff

Sworn to and subscribed before me, this the 16th day of January, 06.

_____ D.C.
Justice Court Clerk

$ 34 COURT COST
PAID BY PLAINTIFF
DATE 1/17/06 RECEIPT NO. 15/97601

Spring Lake Apartment Community

THREE-DAY NOTIC TO PAY RENT OR QUIT
(Mississippi Code of Civil Procedure 1161(2))

TO: VOGEL NEWSOME AND ALL OTHER PERSONS IN POSSESSION OF
ADDRESS OF PREMISES: 1434 Hawthorne Cove.; Jackson, MS 39272

Demand is hereby made upon you for full payment of rent in the amount stated below for the premises located at the above address.

WITHIN THREE (3) DAYS after service of on you of this Notice, you are required to pay said rent in full or to deliver up possession of said premises to the undersigned. You are further notified that the Landlord has elected to, and hereby does, declare the rental agreement or lease under which you hold the premises to be forfeited in the event that you fail to pay the rent in full as required herein.

If you fail to pay all such rent, or to surrender up possession of the premises within three (3) days after service on you of this Notice, the Landlord will institute legal proceedings against you to recover possession of said premises, to declare such rental agreement or lease forfeited, to recover treble rents and damages for unlawful detention of the premises, and to recover attorney's fees and court costs.

AMOUNT DUE (NOT INCLUDING LATE CHARGES): $379.50 .

DATE OF SERVICE: January 6, 2006

Melody J Crews
OWNER/ AGENT

PROOF OF SERVICES:

On Jan. 12, 2006, I served the above Three-Day Notice to Pay Rent or Quit in the following manner:

_____ By delivering a copy personally to the tenant (s).
_____ By leaving a cop with a person over the age of 18 years,
AND sending a copy by mail to the tenants.
__✓__ By posting a copy in a conspicuous place on the property,
AND sending a copy by mail to the tenants.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on Jan. 12, 2006 at Jackson, Mississippi.

Melody J Crews
NAME

SUMMONS TO TENANT

RECEIVED
JAN 24 2006
HINDS COUNTY JUSTICE COURT

STATE OF MISSISSIPPI
COUNTY OF HINDS

DOCKET 2150 PAGE 539
JON C. LEWIS

TO ANY LAWFUL OFFICER OF HINDS COUNTY :

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Witness my hand, this the 17TH day of JANUARY, 2006.

By _____ D.C.

JAN 20 2006
HINDS COUNTY JUSTICE COURT CLERK
BY _____ D.C.

PROCESS POSTED
JAN 2[illegible]

Hinds County Justice Court Clerk
407 East Pascagoula Street - Suite 333
P.O. Box 3400
Jackson, Mississippi 39207
(601) 965-8800

CONSTABLE JON LEWIS
BY _____

"B"

NOTICE

YOU ARE BEING SUED. SHOULD YOU FAIL TO APPEAR AND FILE YOUR ANSWER TO SAID SUIT ON OR BEFORE THE DATE SHOWN, A MONEY JUDGMENT BY DEFAULT WILL BE ENROLLED AGAINST YOU.

May 18, 2006

Jackson officers remembered

- City pays tribute to those who died in line of duty

By Jimmie E. Gates
jgates@clarionledger.com

Vickie D. King/The Clarion-Ledger

Suzanne Walters is escorted by Lt. Steve Sansom on Wednesday to the memorial honoring Jackson's fallen police officers. There, she placed a carnation in memory of her father, Rickey Joe Simmons, who was killed on Feb. 4, 1992. Thirteen officers were memorialized at the ceremony.

Thirteen Jackson police officers, including two killed 113 years ago, were memorialized Wednesday during the annual Jackson Police Memorial Day program at the William L. Skinner Training Academy.

"They had been forgotten about," Police Chief Shirlene Anderson said of officers Walker Guice and Percy Clifton Hines. They were killed Jan. 14, 1893, while attempting to arrest two men.

Anderson said police staffers found out about Hines and Guice while doing research for this year's program.

"I thought I was the only person who knew," said Hines' great-great-niece, Linda Hines Goff of Ridgeland. "I'm truly thankful."

Related Items:
- **Gallery: JPD honors slain officers**

Everyone knew Hines as "Turk," said Goff, who attended the service and placed a flower in memory of her uncle at the base of the granite memorial bearing the name of JPD officers killed in the line of duty.

JPD is the largest Police Department in the state with 477 sworn officers.

Southern District U.S. Attorney Dunn Lampton, speaker for the program, told the families and law officers from throughout the metro area that about 200 officers statewide have been killed in the line of duty.

"It is a fitting and proper program meant to be a sterling tribute to those heroes," Lampton said of the memorial.

Thomas Catchings was the last JPD officer killed in the line of duty. Catchings died March 17, 2005, in a shootout with carjacking suspect Omar Hampton, 18, of Jackson, who also died.

Catchings' widow, Yolanda, said it meant more than life to share in the memorial for her husband and the other fallen officers.

"It's honor, respect, love, dignity and history in the making," Catchings said.

Slain officer Brian Kinsey's 10-year-old daughter, Lauryn, and his widow, Shanna Kinsey Adams, laid a flower on the memorial stone for fallen officers.

Although she has remarried, Adams said the memorial means no one has forgotten Brian Kinsey, who was killed Oct. 22, 1997.

Adams said she wants her daughter to know about her dad, who she said was a great person.

Lauryn was 22 months old when her father was killed while answering a domestic-disturbance call.

IN THE LINE OF DUTY

Jackson Police officers killed in the line of duty:

- Patrolman Walker Guice, Jan. 14, 1893
- Patrolman Percy Clifton Hines, Jan. 14, 1893
- Patrolman Wilburn Burleson Jr., March 10, 1961
- Patrolman Charles Buckley Jr., March 14, 1965
- Intelligence Officer William L. Skinner, Aug. 19, 1971
- Patrolman Floyd Seaton, May 23, 1979

- Patrolman William Hickman, April 13, 1981
- Patrolman Bobby J. Biggert, Feb. 24, 1989
- Patrolman Rickey Joe Simmons, Feb. 4, 1992
- Patrolman John R. Sandifer, Sept. 18, 1994
- Patrolman Robert Washington, Nov. 14, 1995
- Patrolman Brian Kinsey, Oct. 22, 1997
- Patrolman Thomas Catchings, March 17, 2005

Source: Jackson Police Department

Ex-Republic of New Africa leader denounced as terrorist, praised as role model

By Jack Mazurak
jmazurak@clarionledger.com

Brian Albert Broome

Judge William Skinner today criticized Jackson Councilman Kenneth Stokes for inviting convicted felon Imari Obadele to speak at Jackson's City Hall and Jackson attorney Chokwe Lumumba for supporting the action. Obadele, the former leader of the Republic of New Africa, was convicted of conspiracy in the 1971 slaying of Skinner's father, Jackson police Lt. William Louis Skinner.

Former Republic of New Africa president Imari Obadele, who served time for conspiracy in the 1971 slaying of Jackson police Lt. William Louis Skinner, was described today as terrorist by the officer's son.

In another meeting, he was lauded as a role model by Jackson City Council member Kenneth Stokes, who is hosting Obadele tonight during a Black History Month speech at Jackson City Hall.

Obadele appeared this morning at the Jackson City Council's regular meeting, signing up to speak before the panel as regular citizens are allowed to do.

Obadele said the RNA is a peaceful group, not a terrorist organization, that wanted to establish an independent country that included Mississippi.

[redacted] he said, referring to the August 1971 shootout between law enforcement officers and RNA members that resulted in Skinner's death.

But minutes before Obadele spoke to the council, Hinds County Justice Court Judge Bill Skinner blasted the former RNA leader and Stokes.

Obadele had as much told Lt. William Louis Skinner that he was going to kill him, Skinner's son said.

"This man is a terrorist, [redacted] "He ran a terrorist organization, and there is no difference between him and Osama bin Laden."

He chastised Jackson Mayor Harvey Johnson Jr. and the council members who did not speak out against Obadele.

[redacted] Bill Skinner said.
Only two council members, Ben Allen and Marshand Crisler, have publicly said Obadele has no place speaking in City Hall.

Allen, on his WJNT-1180 talk-radio show this morning, blasted Stokes for independently bringing Obadele to City Hall.

Obadele's speech tonight at City Hall, an opener for Black History Month, has stirred strife in city officials and community members through the last five days.

Accusations and cutting comments have only become thicker in the hours before his controversial speech.

During the council's 10 a.m. meeting, a face off between both sides roiled emotions. Obadele and local lawyers Chokwe

"D"

Lumumba and Imhotep Alkebu-lan sat in the front row, about eight feet from the council.

Lumumba said white supremacy is still alive in law enforcement as it was in the 1970s. Referring to Hinds County Sheriff Malcolm McMillin's stance against Obadele's visit, he said white supremacy is alive today, but different.

"Law enforcement is slicker now. We know he (McMillin) has at least one council member here," Lumumba said, referring to Crisler, who sat just to Lumumba's right.

"He wears a black face, but I saw him smiling there with McMillin (Monday at the sheriff's news conference)."

Crisler, Ward 6 councilman, is also a Hinds County Sheriff's Department deputy.

Deliberately extending Lumumba's comment time, Stokes asked him questions, including whether Obadele had visited the council before.

Later in the meeting, Stokes took aim at both McMillin and Allen.

"McMillin lives in Clinton. How can he run things here?" he said. "Ben Allen is the biggest racist I know, but at least he stays in Jackson."

Allen, seated next to Stokes, burst into laughter along with many others in the chamber.

Clinton, where the sheriff lives, is in Hinds County.

MISSISSIPPI FREEDOM MOVEMENT

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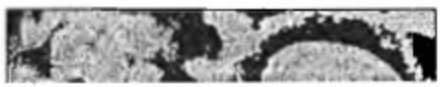
contact

EXHIBIT "5"

Republic of New Africa

Nicholas D. Kimble (Tougaloo '04)

Many of the activists who worked in the Freedom Movement in Mississippi became founders and participants in the Black Power movement, with Stockley Carmichael (of the Student Nonviolent Coordinating Committee) giving the new movement its name during the Meredith Mississippi Freedom March in the summer of 1966. (#39, #52) At the pinnacle of the Black Power Movement in the late 1960s, brothers Milton and Richard Henry, (acquaintances of Malcolm X who renamed themselves Gaidi Obadele and Imari Abubakari Obadele, respectively) assembled a group of 500 militant black nationalists in Detroit, Michigan to discuss the creation of a black nation within the United States. On March 31, 1968, 100 conference members signed a Declaration of Independence outlining the official doctrine of the new black nation, elected a provisional government, and named the nation the Republic of New Africa (RNA). The Declaration of Independence asserted the RNA's aims: to free black people in the United States from oppression; to promote the personal dignity and integrity of the individual and to protect his natural rights; and to support co-operative economics and community self-sufficiency.



The Republic of New Africa identified the Southern states - Louisiana, Mississippi, Alabama, Georgia, and South Carolina - as

subjugated land. According to the RNA, the Southern states were the traditional homeland where Africans had been oppressed three hundred years in slavery and where Africans were due land as part of a reparations settlement. In addition to reparations in land, The Republic of New Africa sought reparations payments of ten thousands dollars for every black person based on Reconstruction's promise to freed slaves of "fifty dollars, forty acres, and a mule." The Republic of New Africa based its political, economical, and cultural activities on Ujamaa, a system taken from concepts of family supposedly present in traditional African societies. The People's Center Council, chaired by the President of the Nation, governed legislative and judicial power and supervised industries and land. The Republic of New Africa provided its citizens with six essentials for human life: food, housing, clothing, education, medical treatment, and defense. These calls for economic independence and African American control can be seen as reactions to both the gains and losses of the early Freedom Movement. To read more about the RNA history and beliefs, see various pamphlets and flyers from the Tougaloo College archives. (#30, #54)

The RNA gained popularity in Mississippi, and on the Tougaloo campus as evidenced by the collection of their papers in the Tougaloo College Archives and articles in campus newspapers about the group. (#28) But the Federal Bureau of Investigation (FBI) immediately targeted the RNA and they began raiding RNA meetings. In August 1971, the FBI and the Jackson Police Department, without warning, attacked the RNA government residence with arms, tear gas, and a tank. One Jackson police officer, William Skinner, was killed, one patrolmen and an FBI agent were wounded but there were no RNA casualties. Eleven Republic of New Africa government officials, including President Imari Obadele and three women, were arrested and tried for murder. Of the RNA 11, eight were convicted and sentenced to life imprisonment based on the weak and conflicting testimony of witnesses. The RNA protested the arrests and verdicts, pointing out that the RNA 11 part of a "long pattern" of violence and injustice against Blacks in Mississippi. (#94, #90)

Following his 1980 release from prisoner, RNA President Imari Obadele earned

a Ph.D. in political science from Temple University and published articles and books upholding RNA's principles of reparations, acquisition of land, and the establishment of an independent, self-sufficient black nation. With a membership of 10,000 in Washington, D.C., the Republic of New Africa continues to promote awareness of racial injustice and inequality in American society.

Related Documents

Flyer, Meredith Freedom March, 1966
Manifesto, Meredith Mississippi Freedom March, 9 June 1966
Speech, Dr. Alvin Poussaint, 1966

Republic of New Africa

Leaflet, Republic of New Africa
Flyer, Republic of New Africa, August 1972-1973
Newspaper, *The Black Encounter*, Tougaloo College, 1972
Newsletter, Republic of New Africa, 1971
Flyer, Trial of Hekima Ana, Republic of New Africa

MISSISSIPPI CODE OF 1972

As Amended

SEC. 97-3-87. Threats and intimidation; whitecapping.

Any person or persons who shall, by placards, or other writing, or verbally, attempt by threats, direct or implied, of injury to the person or property of another, to intimidate such other person into an abandonment or change of home or employment, shall, upon conviction, be fined not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months, or in the penitentiary not exceeding five years, as the court, in its discretion may determine.

SOURCES: Codes, 1906, Sec. 1398; Hemingway's 1917, Sec. 1141; 1930, Sec. 1173; 1942, Sec. 2416.

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EXHIBIT "14"

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- Submit a Crime Tip
- Report Internet Crime
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- What We Investigate
- Natl. Security Branch
- Information Technology
- Fingerprints & Training
- Laboratory Services
- Reports & Publications
- History
- More About Us

Get Our News
- Press Room
- E-mail Updates
- News Feeds

Be Crime Smart
- Wanted by the FBI
- More Protections

Use Our Resources
- For Law Enforcement
- For Communities
- For Researchers
- More Services

Visit Our Kids' Page

Apply for a Job

Civil Rights Statutes

Civil Rights Home

Federal Civil Rights Statutes

Title 18, U.S.C., Section 241 - Conspiracy Against Rights

Title 18, U.S.C., Section 242 - Deprivation of Rights Under Color of Law

Title 18, U.S.C., Section 245 - Federally Protected Activities

Title 18, U.S.C., Section 247 - Church Arson Prevention Act of 1996

Title 18, U.S.C., Section 248 - Freedom of Access to Clinic Entrances (FACE) Act

Title 18, U.S.C., Section 844(h) - Federal Explosives Control Statute

Title 42, U.S.C., Section 3631 - Criminal Interference with Right to Fair Housing

Title 42, U.S.C., Section 14141 - Pattern and Practice

Title 18, U.S.C., Section 241
Conspiracy Against Rights

This statute makes it unlawful for two or more persons to conspire to injure, oppress, threaten, or intimidate any person of any state, territory or district in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the laws of the United States, (or because of his/her having exercised the same).

It further makes it unlawful for two or more persons to go in disguise on the highway or on the premises of another with the intent to prevent or hinder his/her free exercise or enjoyment of any rights so secured.

Punishment varies from a fine or imprisonment of up to ten years, or both; and if death results, or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title or imprisoned for any term of years, or for life, or may be sentenced to death.

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Title 18, U.S.C., Section 242
Deprivation of Rights Under Color of Law

This statute makes it a crime for any person acting under color of law, statute, ordinance, regulation, or custom to willfully deprive or cause to be deprived from any person those rights, privileges, or immunities secured or protected by the Constitution and laws of the U.S.

EXHIBIT "13"

This law further prohibits a person acting under color of law, statute, ordinance, regulation or custom to willfully subject or cause to be subjected any person to different punishments, pains, or penalties, than those prescribed for punishment of citizens on account of such person being an alien or by reason of his/her color or race.

Acts under "color of any law" include acts not only done by federal, state, or local officials within the bounds or limits of their lawful authority, but also acts done without and beyond the bounds of their lawful authority; provided that, in order for unlawful acts of any official to be done under "color of any law," the unlawful acts must be done while such official is purporting or pretending to act in the performance of his/her official duties. This definition includes, in addition to law enforcement officials, individuals such as Mayors, Council persons, Judges, Nursing Home Proprietors, Security Guards, etc., persons who are bound by laws, statutes ordinances, or customs.

Punishment varies from a fine or imprisonment of up to one year, or both, and if bodily injury results or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire shall be fined or imprisoned up to ten years or both, and if death results, or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

Back To Top

Title 18, U.S.C., Section 245
Federally Protected Activities

1) This statute prohibits willful injury, intimidation, or interference, or attempt to do so, by force or threat of force of any person or class of persons because of their activity as:

a) A voter, or person qualifying to vote...;

b) a participant in any benefit, service, privilege, program, facility, or activity provided or administered by the United States;

c) an applicant for federal employment or an employee by the federal government;

d) a juror or prospective juror in federal court; and

e) a participant in any program or activity receiving Federal financial assistance.

2) Prohibits willful injury, intimidation, or interference or attempt to do so, by force or threat of force of any person because of race, color, religion, or national origin and because of his/her activity as:

a) A student or applicant for admission to any public school or public College;

b) a participant in any benefit, service, privilege, program, facility, or activity provided or administered by a state or local government;

c) an applicant for private or state employment, private or state employee; a member or applicant for membership in any labor organization or hiring hall; or an applicant for employment through any employment agency, labor organization or hiring hall;

d) a juror or prospective juror in state court;

e) a traveler or user of any facility of interstate commerce or common carrier; or

f) a patron of any public accommodation, including hotels, motels, restaurants, lunchrooms, bars, gas stations, theaters...or any other establishment which serves the public and which is principally engaged in selling food or beverages for consumption on the premises.

3) Prohibits interference by force or threat of force against any person because he/she is or has been, or in order to intimidate such person or any other person or class of persons from participating or affording others the opportunity or protection to so participate, or lawfully aiding or encouraging other persons to participate in any of the benefits or activities listed in items (1) and (2), above without discrimination as to race, color, religion, or national origin.

Punishment varies from a fine or imprisonment of up to one year, or both, and if bodily injury results or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire shall be fined or imprisoned up to ten years or both, and if death results or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be subject to imprisonment for any term of years or for life or may be sentenced to death.

Back To Top

Title 18, U.S.C., Section 247
Church Arson Prevention Act of 1996

Prohibits (1) intentional defacement, damage, or destruction of any religious real property, because of the religious, racial, or ethnic characteristics of that property, or (2) intentional obstruction by force or threat of force, or attempts to obstruct any person in the enjoyment of that person's free exercise of religious beliefs. If the intent of the crime is motivated for reasons of religious animosity, it must be proven that the religious real property has a sufficient connection with interstate or foreign commerce. However, if the intent of the crime is racially motivated, there is no requirement to satisfy the interstate or foreign commerce clause.

Punishment varies from one year imprisonment and a fine or both, and if bodily injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this section, and the violation is by means of fire or an explosive, a fine under this title or imprisonment of not more than forty years or both; or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire shall be fined in accordance with this title and imprisonment for up to twenty years, or both, and if death results or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined in accordance with this title and imprisoned for any term of years or for life, or both, or may be sentenced to death.

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Title 18, U.S.C., Section 248
Freedom of Access to Clinic Entrances (FACE) Act

This statute prohibits (1) the use of force or threat of force or physical obstruction, to intentionally injure, intimidate or interfere with or attempt to injure, intimidate or interfere with any person or any class of persons from obtaining or providing reproductive health services; (2) the use of force or threat of force or physical obstruction to intentionally injure, intimidate, or interfere with or attempt to injure, intimidate, or interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship; or (3) intentionally damages

or destroys the property of a facility, or attempts to do so, because such facility provides reproductive health services or intentionally damages or destroys the property of a place of religious worship. This statute does not apply to speech or expressive conduct protected by the First Amendment. Non obstructive demonstrations are legal.

Punishment varies from a fine or imprisonment for an offense involving exclusively a nonviolent physical obstruction, the fine shall be not more than $10,000 and the length of imprisonment shall be up to six months, or both, for the first offense: and the fine shall, notwithstanding section 3571, be up to $25,000 and the length of imprisonment shall be not more than 18 months, or both, for a subsequent offense; and if bodily injury results, the length of imprisonment shall be up to ten years, and if death results, it shall be for any term of years or for life.

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Title 18, U.S.C., Section 844(h)
Federal Explosives Control Statute

Whoever (1) uses fire or an explosive to commit any felony which may be prosecuted in a court of the United States, or (2) carries an explosive during the commission of any felony which may be prosecuted in a court of the United States, including a felony which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device shall, in addition to the punishment provided for such felony, be sentenced to imprisonment for five years but not more than 15 years. In the case of a second or subsequent conviction under this subsection, such persons shall be sentenced to imprisonment for ten years but not more than 25 years.

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Title 42, U.S.C., Section 3631
Criminal Interference with Right to Fair Housing

This statute makes it unlawful for any individual(s), by the use of force or threatened use of force, to injure, intimidate, or interfere with (or attempt to injure, intimidate, or interfere with), any person's housing rights because of that person's race, color, religion, sex, handicap, familial status or national origin. Among those housing rights enumerated in the statute are:

- The sale, purchase, or renting of a dwelling;
- the occupation of a dwelling;
- the financing of a dwelling;
- contracting or negotiating for any of the rights enumerated above.
- applying for or participating in any service, organization, or facility relating to the sale or rental of dwellings.

This statute also makes it unlawful by the use of force or threatened use of force, to injure, intimidate, or interfere with any person who is assisting an individual or class of persons in the exercise of their housing rights.

Punishment varies from a fine of up to $1,000 or imprisonment of up to one year, or both, and if bodily injury results, shall be fined up to $10,000 or imprisoned up to ten years, or both, and if death results, shall be subject to imprisonment for any term of years or for life.

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Title 42, U.S.C., Section 14141
Pattern and Practice

This civil statute was a provision within the Crime Control Act of 1994 and makes it unlawful for any governmental authority, or agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers or by officials or employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

Whenever the Attorney General has reasonable cause to believe that a violation has occurred, the Attorney General, for or in the name of the United States, may in a civil action obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.

Types of misconduct covered include, among other things:

1. Excessive Force
2. Discriminatory Harassment
3. False Arrest
4. Coercive Sexual Conduct
5. Unlawful Stops, Searches, or Arrests

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MISSISSIPPI CODE OF 1972

As Amended

SEC. 97-3-107. Stalking.

(1) Any person who willfully, maliciously and repeatedly follows or harasses another person, or who makes a credible threat, with the intent to place that person in reasonable fear of death or great bodily injury is guilty of the crime of stalking, and upon conviction thereof shall be punished by imprisonment in the county jail for not more than one (1) year or by a fine of not more than One Thousand Dollars ($1,000.00), or by both such fine and imprisonment.

(2) Any person who violates subsection (1) of this section when there is a valid temporary restraining order, ex parte protective order, protective order after hearing, court approved consent agreement, or an injunction issued by a municipal, justice, county, circuit or chancery court, federal or tribal court or by a foreign court of competent jurisdiction in effect prohibiting the behavior described in subsection (1) of this section against the same party, shall be punishable by imprisonment in the county jail for not more than one (1) year and by a fine of not more than One Thousand Five Hundred Dollars ($1,500.00).

(3) A second or subsequent conviction occurring within seven (7) years of a prior conviction under subsection (1) of this section against the same victim, and involving an act of violence or "a credible threat" of violence as defined in subsection (5) of this section, shall be punishable by imprisonment for not more than three (3) years and by a fine of not more than Two Thousand Dollars ($2,000.00).

(4) For the purposes of this section, "harasses" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or harasses the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the person. "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

(5) For the purposes of this section, "a credible threat" means a threat made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety.

SOURCES: Laws, 1992, ch. 532, Sec. 1; 1996, ch. 326, Sec. 1, eff from and after passage (approved March 17, 1996) Amended by Laws 2000, Ch. 553, Sec. 1, HB565, eff. July 1, 2000.

PREVIOUS VERSIONS: Pre-2000

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Exhibit "12"

Private Practice Lawyer Profile for G. Clark Monroe II

G. Clark Monroe II
Member
DunbarMonroe, PLLC
1855 Lakeland Drive, Suite R-201
Jackson, Mississippi 39216
(Hinds & Madison Cos.)

Telephone: 601-366-1805
Fax: 601-366-1885
Email: Send an Email

BV Peer Review Rated

Practice Areas: Insurance Defense; Professional Liability; Motor Carrier Defense; Transportation; Logistics; Motor Carrier Liability; Trucking Liability; Commercial Litigation; Products Liability; Telecommunications; Freight Claims; Cargo Claims

Admitted: 1994, Mississippi, U.S. District Court, Southern and Northern Districts of Mississippi and U.S. Court of Appeals, Fifth Circuit

Law School: University of Mississippi, J.D., magna cum laude, 1994

College: University of Mississippi, Accounting, cum laude, 1990

Member: Hinds County and American (Member, Sections: Litigation and Public Utility, Communications and Transportation Law) Bar Associations; The Mississippi Bar; Conference of Freight Counsel; Transportation Lawyers Association; Defense Research Institute.

Biography: Omicron Delta Kappa; Phi Delta Phi; Beta Alpha Psi. Business Manager, Mississippi Law Journal. Member, Moot Court Board. Author: "Accidental Injury Under the Mississippi Workers' Compensation Act: Fewer Compensable Claims and a Pandora's Box of Tort Liability," 62 Miss. L. J. 689 (1993). Member, Board of Directors, Mississippi Law Journal, 2002-2006.

Military: Major, Field Artillery, Mississippi Army National Guard 631st FA BDE, Operations Officer

Reported Cases: Colony National Ins. Co. v. Lindsey, 2006 WL 709781 (N.D. Miss. 2006); Kuehn v. United Van Lines, LLC, 367 F.Supp. 2d 1047 (S.D. Miss. 2005); Adams v. Cinemark USA, Inc., 831 So.2d 1156 (Miss. 2002).

Born: Newton, Mississippi, August 24, 1968

ISLN: 909640437

Web Site: http://www.dunbarmonroe.com

EXHIBIT "11"

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT – JACKSON DIVISION

VOGEL NEWSOME — PLAINTIFF

V. — CIVIL ACTION NO. 3:07-cv-00560 WHB LRA

MELODY CREWS, ET AL. — DEFENDANTS

PLAINTIFF'S OBJECTION(S) AND MOTION TO STRIKE STATEMENTS OF MOTION TO WITHDRAW OF WANDA ABIOTO AND JURY TRIAL DEMANDED ON TRIABLE ISSUE(S)

COMES NOW Plaintiff, Vogel Newsome ("Plaintiff" and/or "Newsome"), as ***a party*** to this instant action, and files this her *Objection(s) and Motion to Strike Statements of Motion to Withdraw of Wanda Abioto* (hereinafter known as "MTSMTW") pursuant to Rule 12(f) of the Federal Rules of Civil Procedure ("FRCP") and any and all governing statutes/laws relating to said matters. Plaintiff through this instant pleading, request this Court exercise its own discretion and issue the applicable sanctions (if permissible – via "**snapshot rule**" and "**inherent power**") by laws/statutes of and against her attorney, Wanda Abioto ("Abioto"), pursuant to Rule 11 of the FRCP, Mississippi Rules of Professional Conduct and/or statutes/laws governing said matters.

> **Conduct Measured at Time of Presentation:** *Skidmore Energy, Inc. v. KPMG,* 455 F.3d 564, 569-570 (5th Cir. 2006) – **Under the "snapshot" rule, sanctions based on a frivolous pleading were proper because the lack of legal and evidentiary support for the pleading existed at the time it was filed.** The district court found that the claims lacked both **legal** and **factual** support and imposed more than $500,000 in sanctions against plaintiffs and their counsel, based on the defendants' reasonable expenses incurred in litigating against the claims. . . .This test focuses on the instant when the signature is placed on the document, and the state of mind of the signer at that time. The test ensures that Rule 11 liability is assessed only for a violation existing at the moment of filing. The district court had clearly concluded that the pleadings were frivolous when filed. The fact that they continued to lack evidentiary support throughout the proceedings only underscored the violation.

EXHIBIT "10"

> **Inherent Power of Court to Impose Sanctions – Bad Faith Required:** *Amlong & Amlong, P.A. v. Denny's, Inc.*, 457 F.3d 1180, 1202-1203 (2006) – Sanctions could not be imposed under the court's inherent powers without an explicit finding of bad faith. . . . In particular, before a court may impose sanctions on an attorney under its inherent powers, the court must make a finding of bad faith.

Plaintiff further **OBJECTS** to Abioto's request to withdraw as her attorney in this instant lawsuit. Therefore, ***WITHOUT*** **WAIVING** SAID OBJECTION, Plaintiff moves this Court to pursuant Rule 12(f) of the FRCP to:

> Strike the statements Abioto's *Motion to Withdraw,* including: Opening Paragraph; Paragraphs numbered 1., 2., 4.[1], 5., 6. and 7; and closing paragraph beginning,, "Wherefore premises considered, counsel herein prays" and the relief sought in said closing paragraph. Furthermore, Abioto's Motion to Withdraw was provided in *bad faith* and she knew and/or should have known upon filing same, that it could not be sustained and that there was no hope of succeeding. Said Motion to Withdraw was provided for purposes of sham/frivolousness, to deprive Plaintiff legal representation until the completion of this lawsuit, delay, hindering proceedings, malicious intent, obstructing the administration of justice, needlessly increasing the costs of litigation, to deprive Plaintiff equal protection of the laws and due process of laws, and does not present any facts, evidence or legal conclusion(s) to sustain the arguments made and the relief sought through her pleading.

Plaintiff further states the following in support of this instant MTSMTW and the relief sought herein:

1. Plaintiff is a **party** to this action and thereby authorized by statutes/laws to file said pleading and sign it in that she is a party in this action, has personal knowledge as to the claims and evidence presented in this instant pleading, the Complaint filed in this instant lawsuit, her subsequent pleadings and is subject to the provisions of Rule 11 of the FRCP.

2. This instant MTSMTW is submitted in good faith and is not provided for purposes of delay, hindering proceedings, obstructing the administration of justice, or needlessly increasing the costs of litigation, etc. Moreover, said pleading is supported by the investigation/research and the facts, evidence and/or legal conclusions presented herein.

3. This instant pleading is being filed to preserve the rights of the Plaintiff secured to her under the United States Constitution, Civil Rights Act and other laws governing said matters to assure she receives equal protection of the laws and due process of laws. Plaintiff has had to file this pleading in that valid and legal concerns regarding her attorney's handling of matter warrant's the necessity of said filing to preserve the rights of Plaintiff and to protect her from any possible injury/harm which may result as a direct and proximate result of Abioto's unlawful/illegal and unethical withdrawal of representation and Abioto's failure to comply with the statute-laws governing attorney-client relationship.

---

[1] Incorrectly numbered – No. 3 omitted.

4. Plaintiff believes that a reasonable mind may concluded based on the facts, evidence and legal conclusions presented in this instant pleading and previous pleadings filed by Plaintiff, would find the actions of Abioto ***reprehensible*** and ***disturbing***. Moreover, that her acts are done with ill and malicious intent to throw this case and aid opposing counsel and their clients in this action. Thus, making good on the alleged agreement made known by opposing counsel in his February 19, 2008 and February 21, 2008 correspondence to Abioto. Attached hereto as **EXHIBITS A"** and **"B"** and incorporated herein by reference. Said agreement that appears to have been entered into between Abioto and opposing counsel and unbeknownst to the Plaintiff. Plaintiff having to find out through pleadings filed in this instant lawsuits at what extreme measures opposing counsel had gone to obtain an *unlawful* and *illegal* advantage over the Plaintiff. Moreover, the threats, intimidation, coercion, etc. Abioto encountered from opposing counsel in his effort to obtain such end – withdrawal of Plaintiff's counsel and a dismissal of this instant lawsuit.

5. The opening paragraph of Abioto's Motion to Withdraw is to be stricken. *Plaintiff request this Court exercise its inherent power and discretion and have Abioto's statement in said paragraph stricken and/or statements within Abioto's Motion to Withdraw stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in* ***bad faith, is legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers")****, is sham/frivolous and provided for unlawful and unethical purposes, and does not present any facts, evidence or legal conclusion(s) to support the withdrawal sought.. The information in Motion to Withdraw was provided with frivolous intent and misuse of the judicial process and is neither certified as required under Rule 11 and neither is it in compliance with the Mississippi Rules of Professional Conduct. Nor is the Motion to Withdraw accompanied by the* ***required Affidavit****. Abioto failed to make reasonable inquiry into to the laws and facts underlying her Motion to Withdraw filed. Thus, moving this Court to issue the applicable sanctions pursuant to Rule 11 of the FRCP and/or governing laws of and against Abioto.* (hereinafter contents referenced as "*Plaintiff request this Court exercise its inherent power and discretion and have Abioto's statement in said paragraph stricken and/or statements within Abioto's Motion to Withdraw stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in* ***bad faith, is legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers")****. . . "*)

6. ¶ 1. in its entirety of Abioto's Motion to Withdraw is to be stricken. Said paragraph provides no new, pertinent or relevant information that is not already known to this Court, the Plaintiff and the parties involved.

Plaintiff request this Court exercise its inherent power and discretion and have Abioto's statement in said paragraph stricken and/or statements within Abioto's Motion to Withdraw stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in ***bad faith, is legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers")****. . . "*)

7. ¶ 2. in its entirety of Abioto's Motion to Withdraw is to be stricken. Abioto provides no facts and/or evidence to support any such illness alleged. While Abioto is not required to provide any medical records, there is nothing provided from her physician to support any such illness or her inability to represent her client (Newsome) in this instant action. *It appears at the time of her filing, Abioto is still practicing law*

and a reasonable mind may conclude that she may still be representing <u>other</u> clients. Thus, leaving one to conclude, how it would be possible for Abioto to represent other client<u>s</u> while claiming to be ill and not be able to represent the Plaintiff (Newsome) in this instant lawsuit. Neither has Abioto provided the ***required*** **Affidavit** to support her Motion to Withdraw and neither is said pleading certified in accordance with the laws governing said matters. The Motion to Withdraw is lacking in facts, evidence and legal conclusions to sustain it. Mere assertion presented by Abioto without evidence and facts to support it, is insufficient and cannot be sustained as a matter of law. An investigation into such assertion is warranted to determine whether Abioto has been representing other clients in other legal matters, while she has clearly abandoned the Plaintiff asserting illness – if so, how is it that she supposedly works through illness to represent other clients; however, cannot represent the Plaintiff. Such inconsistency would raise reasonable doubt and credibility to such assertion of illness.

While Abioto asserts "That it is in the best interest of the prosecution of this claim that counsel herein be allowed to withdraw so as not to prejudice the prosecution of the claim," she has presented nothing by way of facts, evidence or legal conclusion to sustain said statement. The record evidence is clear however, that opposing counsel in this instant lawsuit as well as opposing counsel in Civil Action No. 3:07-cv-00099 have been in contact with Abioto. Such contact which has been had to threaten, intimidate, harass, coerce Abioto in abandoning the Plaintiff and the duties owed her client under the client-attorney relationship. Abioto in abandoning Plaintiff Newsome. Therefore, given the facts, evidence and legal conclusions, a reasonable mind may conclude, opposing counsel having contact with Abioto has not been made in good faith; however, has been in bad faith for unlawful/illegal and unethical gain. Efforts taken by opposing counsel to force Abioto to abandon Plaintiff so that they may obtain an undue/unfair advantage over the Plaintiff in this instant lawsuit. Actions taken by opposing counsel to protect their personal and financial interest in this lawsuit and that before this Court in Civil Action No. 3:07-cv-00099 ("00099").

From said communication a reasonable mind may conclude, it appears that opposing counsel and Abioto had reached an agreement of her withdrawal unbeknownst to the Plaintiff. A reasonable mind may conclude from Abioto's failure to file the required pleadings in this action was done with willful, and malicious intent to cause Plaintiff injury/harm although she wants it to appear she is concerned about prejudice to the Plaintiff. Any such concern which is questionable based upon her filing of the Motion to Withdraw and negligence in having Defendant Dial Equities, Inc. served with the Summons and Complaint in this instant lawsuit. Abioto was provided with executed Summons in a timely manner to have the Summons and Complaint served upon Defendant Dial Equities, Inc.; however, elected not to do so. Said failure, a reasonable mind may conclude, was based upon the alleged agreement reached between she and opposing counsel for this Defendant.

*<u>Plaintiff request this Court exercise its inherent power and discretion and have Abioto's statement in said paragraph stricken and/or statements within Abioto's Motion to Withdraw stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in **bad faith**, is **legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers")**. . .</u>*

8. ¶ 4. in its entirety of Abioto's Motion to Withdraw is to be stricken. Said statement is false. Abioto asserts, *"That this Motion has been electronically delivered to the plaintiff and the opposing counsel in this cause."* Abioto failed to provide the

Plaintiff with a copy of her Motion to Withdraw. Abioto's failure to provide the Plaintiff with a copy was deliberately done to obtain an unlawful withdrawal in this instant lawsuit and to deprive the Plaintiff the opportunity to contest her withdrawal in that she is aware of the unfinished business between she and the Plaintiff. The Plaintiff had to obtain knowledge of said filing through other resources. Therefore, the Plaintiff request and/or demand that this Court require Abioto to provide proof to support said statement. A reasonable mind may conclude that Abioto's *failure to provide Plaintiff with copy of Motion to Withdraw* was done with willful and malicious intent. Moreover, may have been done in furtherance of the alleged agreement asserted by Defendants' counsel, Clark Monroe.

> *Myers v. Mississippi State Bar,* 480 So.2d 1080 (Miss.,1985) - Attorney's withdrawal from representation of client may be accomplished only by filing motion with court with **proper** *notice* to client. Sup.Ct.Rules, Rule 40; Code of Prof.Resp., DR2-110(A).
>
> *Liebling v. The Mississippi Bar,* 929 So.2d 911 (Miss.,2006) - When a client is misled by his attorney, the need to deter similar misconduct by sanctioning the attorney in a disciplinary proceeding is great.
>
> *Liebling v. The Mississippi Bar,* 929 So.2d 911 (Miss.,2006) - The failure to follow the professional rules involving duties to clients involve the most important ethical standards the profession espouses.

Plaintiff request this Court exercise its inherent power and discretion and have Abioto's statement in said paragraph stricken and/or statements within Abioto's Motion to Withdraw stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in ***bad faith, is legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers").***. . .

9. ¶ 5. in its entirety of Abioto's Motion to Withdraw is to be stricken. Said paragraph provides no new information and/or facts not already known to this Court, the Plaintiff or the parties to this instant lawsuit. Abioto asserts, *"That motions and/or responses have been filed in this case by plaintiff, Vogel Newsome. That counsel herein has not participated in the filing of said motions and herein seeks to withdraw so as not to prejudice the claims of the plaintiff."* Based upon the facts, evidence and legal conclusions presented herein and prior pleadings of the Plaintiff, a reasonable mind my conclude, Abioto's concern of prejudice is pretext/pretense and comes way too late. Moreover, for this Court to allow said withdrawal would indeed prejudice the Plaintiff. The record evidence in this instant lawsuit and 0099 will support opposing attorney(s) acts of following the Plaintiff from job-to-job, **attorney-to-attorney**, request to have Plaintiff's attorney reported to the Mississippi Bar. All in efforts of obtaining the withdrawal and dismissal of this instant lawsuit. No any such concerns as to prejudice has come way too late, and Plaintiff is in the process of seeing that the applicable authorities are made aware of the civil and criminal wrongs made known to this Court. This Court's knowledge of said wrong and failure to uphold the laws and deter such unlawful/illegal and unethical practices.

While opposing counsel in this instant lawsuit has sought to get Plaintiff's

counsel to withdraw as well as dismiss this lawsuit voluntarily, said efforts have failed. Moreover, acts by opposing counsel is prohibited by statutes/laws and clearly in violation of the Mississippi Code of Professional Conduct.

> *Fairchild v. General Motors Acceptance Corp.*, 254 Miss. 261, 179 So.2d 185 (Miss. 1965) – [7] [8] In the case before the court here, the appellant's answer was on file and its withdrawal was coincident with the attorney's withdrawal from the case. If it were conceded that so long as the attorney continued to represent his client he might withdraw his client's pleadings, such authority would not survive the termination of the relationship. The withdrawal of appellant's pleadings without his knowledge or consent, when the case was set for trial and the appellant *266 was absent, had the effect of depriving appellant of a ***substantial*** **right**.
>
> [9] The attorney was without power to withdraw his client's pleadings under the circumstances in the record, and such attempted withdrawal was sholly ineffectual to remove the pleadings from the file.

Plaintiff request this Court exercise its inherent power and discretion and have Abioto's statement in said paragraph stricken and/or statements within Abioto's Motion to Withdraw stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in ***bad faith***, *is* ***legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers")***. . .

10. ¶ 6. in its entirety of Abioto's Motion to Withdraw is to be stricken. The Plaintiff is a party to this instant lawsuit and based upon the actions of Abioto, had the right to file pleadings in this instant lawsuit to preserve and/or protect her claims. Therefore, Abioto's assertion, "*That counsel herein on behalf of the plaintiff seeks to have all prior motions and/or responses retroactively filed so as to protect the interest of the plaintiff due to the illness of counsel herein,*" is sham/frivolous. Abioto received a copy of the pleadings filed by the Plaintiff in this instant lawsuit and, therefore, was aware that Plaintiff – as a matter of law – was entitled to file the pleadings submitted in this lawsuit. Never during Abioto's representation of the Plaintiff, did the Plaintiff ask Abioto to violate the laws and/or commit civil/criminal wrongs in her representation of Plaintiff. Nor did the Plaintiff ask Abioto to act in a manner that would violate the Code of Professional Conduct. Plaintiff's pleadings filed in this instant lawsuit was submitted and good faith and substantiated by the facts, evidence and/or legal conclusions presented therein.

Abioto's assertion of being ill does not present nor provide a defense for her lack of communication with Plaintiff and deliberate, willful and malicious acts in abandoning the Plaintiff. Thus, leaving the Plaintiff to fin for herself and depriving the Plaintiff of the legal expertise and many years of experience Abioto brings to the legal profession. While Abioto assured the Plaintiff that she would have Defendant Dial Equities, Inc. in this instant lawsuit served with Summons and Complaint, Abioto failed to do so. A reasonable mind may conclude from the evidence surfacing in this lawsuit, Abioto entered and/or made arrangements with opposing counsel not to have this Defendant served with Summons and Complaint. Actions which may have been done

for her personal/financial interest and that of opposing counsel's personal/financial interest.

A reasonable mind may conclude given the facts, evidence and/or legal conclusion and malicious acts of Abioto, she falsified/lied to Plaintiff, has been dishonest, deceitful and misrepresented herself to the Plaintiff and alleges illness for personal/financial gain/purposes. For the purposes of benefiting herself and that of opposing counsel in this instant lawsuit.

While opposing counsel asserted that he would contest Abioto's withdrawal, to date and/or at the time Plaintiff submitted this instant MTSMTW, such pleading by opposing counsel had not been filed. All was merely a part of the elaborate conspiracy which Plaintiff believes an investigation will yield/expose.

> *Gex v. Mississippi Bar,* 656 So.2d 1124 (Miss.,1995) - Lawyer who does not act to adjudicate case or provide settlement for his client, who does not communicate with client for long periods and who allows statute of limitations to run violates rule requiring lawyer to act with reasonable diligence and promptness in representing client. Rules of Prof.Conduct, Rule 1.3.

> *Gex v. Mississippi Bar,* 656 So.2d 1124 (Miss.,1995) - Attorney who does not tell client truth about his case violates rule against dishonesty, deceit, and misrepresentation. Rules of Prof.Conduct, Rule 8.4(c).

Plaintiff request this Court exercise its inherent power and discretion and have Abioto's statement in said paragraph stricken and/or statements within Abioto's Motion to Withdraw stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in ***bad faith, is legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers").*** *. . .*

11. ¶ 7. in its entirety of Abioto's Motion to Withdraw is to be stricken. Abioto's assertion, "*That counsel herein does not ratify the contents of said motions but herein affirm the right of the plaintiff to set forth her defenses and position in regard to said pleadings,*" is irrelevant, impertinent and immaterial. No evidence or legal conclusions has been presented by Abioto or parties to this action to support that the Plaintiff had no right to file the pleadings submitted by Plaintiff. Never did the Plaintiff request that Abioto act in an unlawful/illegal and/or unethical manner before this Court or in the representation of Plaintiff. In fact, the pleadings submitted by the Plaintiff in this instant lawsuit are legally and factually sufficient to sustain the claims and assertions made therin.

Plaintiff request this Court exercise its inherent power and discretion and have Abioto's statement in said paragraph stricken and/or statements within Abioto's Motion to Withdraw stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in ***bad faith, is legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers").*** *. . .*

12. Closing Paragraph, and the relief sought therein, in its entirety of Abioto's Motion to Withdraw is to be stricken. Abioto's assertion, "*Wherefore premises considered, counsel herein prays that the Court will enter an immediate order allowing*

for withdrawal in the above referenced cause," Abioto has presented nothing by way of her Motion to Withdraw to sustain the relief sought through said motion. Therefore, as a matter of law, said Motion to Withdraw is to be denied and the relief sought therein is to be denied.

Plaintiff request this Court exercise its inherent power and discretion and have Abioto's statement in said paragraph stricken and/or statements within Abioto's Motion to Withdraw stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in ***bad faith, is legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers")***. . .

I. GOOD CAUSE REQUIRED TO BE SHOWN:

Upon this Court's use of the "snapshot rule," Plaintiff believes a reasonable mind may conclude that Abioto's Motion to Withdraw was submitted with knowledge that she had not chance of succeeding. She deliberately failed certify her Motion to Withdraw and provide the required Affidavit to sustain it. "Mere" assertions without facts, evidence and legal conclusions is clearly prohibited as a matter of law/statute. Abioto having in her possession copies of pleadings filed in this instant lawsuit and, therefore, was aware and/or should have been aware of all of the facts, evidence and legal conclusions the Plaintiff has set forth in the pleadings filed in this instant lawsuit. Therefore, for the above foregoing reasons and the following:

13. Abioto's Motion to Withdraw is to be denied. She has failed to present good cause to sustain a withdrawal in this lawsuit.

14. Abioto has failed to provide the Plaintiff with substitution of counsel.

15. Abioto has obtained and retained a substantial amount of Plaintiff's money to represent her in this legal matter and has failed to return said money.

> *Killingsworth v. State,* 490 So.2d 849 (Miss.,1986) - Attorney may, for good cause and upon proper motion, withdraw from representing client before Supreme Court. Sup.Ct.Rules, Rule 40.

16. The record evidence not only in this instant action, but that in the Hinds County Court of Mississippi (Jackson) will sustain that Abioto undertook the duties of representing the Plaintiff and filed the required pleadings to preserve the rights of the Plaintiff. In fact, correspondence presented in this instant lawsuit will support opposing counsel's contacting Abioto in efforts to trying to get her to unlawfully and illegally dismiss this lawsuit as well as abandon the Plaintiff. Actions to get this lawsuit dismissed unbeknownst to the Plaintiff – efforts which has failed. See Exhibits "A" and "B" attached hereto.

> *Smith v. Anderson-Tulley Co.,* 608 F.Supp. 1143 (S.D.Miss.W.Div.,1985)(BARBOUR) - (n. 9) Once attorney has undertaken duties of making legal counsel available pursuant to CPR Canon 2, exercising independent professional judgment on behalf of client pursuant to Canon 5 and representing client zealously within bounds of law pursuant to Canon 7, attorney may not be relieved of his duty

without compelling reasons. ABA Code of Prof.Resp., Canons 2, 5, 7.

(n. 8) Obligation of attorney to defend client is one of paramount obligations undertaken in attorney-client relationship.

(n. 10) Attorney should completely disclose to client any conflicts of interest.

Smith v. Anderson-Tulley Co., 608 F.Supp. 1143 (S.D.Miss.W.Div.,1985) - Attorney retained . . . would not be allowed to withdraw without. . . consent or valid and compelling reason for withdrawal over their objection, on basis that . . . duty to defend may have ended.

17. Abioto since being retained by the Plaintiff, has at times exercised independent professional judgment – appearing in the Hinds County Court matter on or about August 31, 2006, filing post-hearing motions in said court, filing of the voluntary dismissal pleading in said action, etc. Abioto assisted in the preparation and the process in getting the Complaint filed in this instant lawsuit. Said Complaint which was filed under the direction and guise of Abioto. Doing so within the bounds of the laws. Therefore, she may not now be relieved of the duties owed to Plaintiff without presenting compelling reasons for the relief she seeks through her Motion to Withdraw.

Terrain Enterprises, Inc. v. Western Cas. and Sur. Co., 774 F.2d 1320 (5th Cir. 1985) - It is presumed that attorney who has represented party is authorized to take all action necessary to conduct litigation.

Plaintiff request this Court exercise its inherent power and discretion and have Abioto's statement in said paragraph stricken and/or statements within Abioto's Motion to Withdraw stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in ***bad faith, is legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers").***. . .

II. UNRESOLVED ISSUES:

There presently remain unresolved issues between the Plaintiff and Abioto which clearly prohibits the withdrawal Abioto seeks. Therefore, in further support of Plaintiff's objection and defense to the Motion to Withdraw and for the reasons set forth above and as follows, she further states:

18. Unresolved issues regarding the substantial amount of money Plaintiff paid Abioto to represent her in this legal matter. Said money which has not been returned to the Plaintiff.

19. Unresolved issues remain regarding how the money paid to Abioto has been preserved and/or expensed in the representation of Plaintiff. Said money was not to be used for Abioto's personal pleasures and personal interest. Said money was provided by the Plaintiff for payment of legal services.

Mississippi Bar v. Sweeney, 849 So.2d 884 (Miss.,2003) - Attorney's misappropriation of her client's property for her own use and benefit and her decision not to respond, or even appear, before complaint tribunal warranted three-year suspension from practice of law, rather than one-year suspension imposed by complaint tribunal, even though attorney made proper disbursements, following a court order, and she may have suffered from serious personal problems. Rules of Prof.Conduct, Rules 1.1, 1.3, 1.4, 1.15, 8.4(a, c, d).

Mississippi State Bar v. Odom, 566 So.2d 712 (Miss.,1990) - Commingling of client funds by attorney warrants suspension from practice of law for three years.

20. It appears that Abioto is attempting to obtain an unlawful withdrawal and bail with the Plaintiff's money. Given the evidence presented in this instant pleading, there are serious concerns as to Abioto's handling of Plaintiff's money which may warrant an investigation by the applicable agency and/or authorities to which matter is presented.

Plaintiff request this Court exercise its inherent power and discretion and have Abioto's statement in said paragraph stricken and/or statements within Abioto's Motion to Withdraw stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in ***bad faith, is legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers").*** *. . .*

Plaintiff request this Court exercise its inherent power and discretion and have Abioto's statement in said paragraph stricken and/or statements within Abioto's Motion to Withdraw stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in ***bad faith, is legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers").*** *. . .*

III: RULE 11 SANCTIONS/MISSISSIPPI CODE OF PROFESSIONAL CONDUCT:

For the reasons set forth above and in previous pleadings filed by the Plaintiff, a reasonable mind may conclude that sanctions are to be imposed of and against Abioto for the unlawful/illegal and unethical practices presented through the evidence (her Motion to Withdraw), this instant pleading and Plaintiff's previous pleadings filed in this instant lawsuit addressing the reasons for her having to assume the responsibility to getting pleadings filed in this lawsuit to preserve and protect her rights, claims and interest. In further support of Rule 11 sanctions and Plaintiff's request that an investigation be made and the applicable actions taken against Abioto in compliance with the Mississippi Code of Professional Conduct to deter such actions, Plaintiff further states:

21. Had the Plaintiff not filed the required pleadings in this instant lawsuit, she would have risked losing important rights secured/guaranteed to her under the U.S. Constitution, Civil Rights Act, Fair Housing Act, Federal Rules of Civil Procedure, and other statutes/laws governing said matters. For example, in Case 00099, Defendants Jon Lewis and William Skinner placed all of their confidence in the hands of their attorney to file pleadings on their behalf. While their attorney was busy committing fraud upon this Court, he allowed the deadline for filing a responsive pleading in that action to lapse. To Lewis' and Skinner's demise/detriment; however, to the benefit of the Plaintiff in that action.

> *Mekdeci By and Through Mekdeci v. Merrell Nat. Laboratories,* 711 F.2d 1510 (1983) - (n. 13) A party need not blindly acquiesce in every recommendation made by his attorney. (n. 17) If plaintiffs were afforded inadequate representation by their attorneys in products liability action, their remedy was not a new trial but a suit against their attorneys for alleged malpractice.

> *Singleton v. Foreman*, 435 F.2d 962 (1970) - A client by virtue of a contract with his attorney is not made an indentured servant, a puppet on counsel's string, nor a chair in the courtroom. Counsel should advise, analyze, argue, and recommend, but his role is not that of an imperator whose edicts must prevail over the client's desire.

22. All because a person is represented by counsel, does not require said person to place all of their trust in hope in the hands of the attorney without any intervention, participation and input from the client and how they would like their case to proceed. As long as the client is not requiring the attorney to violate the laws, said client is allowed to advise attorney on how they would like to proceed in litigation.

> *In re Lewis,* 654 So.2d 1379 (Miss.,1995) - Until such time as extension is granted, brief remains due, and lawyers who request extension at last minute do so at their own peril and, most importantly, at peril of their clients.

23. There was simply no excuse for Abioto's failure to communicate with the Plaintiff. Leaving the Plaintiff to have to prepare and file the required pleadings in this instant lawsuit. From Abioto's Motion to Withdraw, a reasonable mind may conclude the rush job done in preparation and submittal of said pleading. It lacks evidence, facts and legal conclusions to sustain it and clearly was presented with knowledge that it had no hope of succeeding. Moreover, acts deliberately done to satisfy opposing counsel who has been seeking said pleading from Abioto. Abioto deliberately failing to serve the Summons and Complaint on Defendant Dial Equities, Inc. in this instant lawsuit – while she assured the Plaintiff she would handle. For, the purposes (one may conclude) of aiding opposing counsel and clients.

> *Alexander v. The Mississippi Bar,* 651 So.2d 541 (Miss.,1995) - Attorney violates Rules of Professional Conduct when there are only six instances of communication, most of which are

one-sided on part of clients, over a period of three years, attorney delays in preparing complaint and then hurriedly types up a two page complaint and gives it to the client to take to court to file himself, and matter is never brought to trial. ABA Code of Prof.Resp., DR 1-102(A)(1, 5), DR 6-101(A)(3).

Vining v. Mississippi State Bar Ass'n, 508 So.2d 1047 (Miss.,1987) - Neglecting case so that statute of limitation runs, while telling client that case is being handled, warrants public reprimand, given extenuating circumstances. Code of Prof.Resp., DR6-101.

Underwood v. Mississippi Bar, 618 So.2d 64 (Miss.,1993) - Attorney who violates rules of conduct by knowingly and intentionally lying to clients without regard for harm and inconvenience and mental anguish of client, to cover neglect of case, will be suspended for one year. Rules of Prof.Conduct, Rules 1.1-1.4, 8.4(a, c, d).

24. Abioto requested a substantial retainer from the Plaintiff to represent her with knowledge she had no intention of performing the duties to completion and/or intention of fulfilling contract entered into with the Plaintiff. It appears from the actions of Abioto, her agreement to represent the Plaintiff was scam, fraudulent act to deceive and extort money from the Plaintiff.

Mississippi State Bar v. Odom, 566 So.2d 712 (Miss.,1990) - Acts of dishonesty, fraud, deceit, and/or misrepresentation by attorney constitute ***grounds for disbarment***.

Mississippi State Bar Ass'n v. A Mississippi Attorney, 489 So.2d 1081 (Miss.,1986) - A client may be an educated and experienced party dealing at arm's length with an attorney, but the attorney may still be disciplined for overreaching if the fee charged is grossly disproportionate to services rendered. Code of Prof.Resp., DR2-106(A, B); ?Code 1972, § 73-3-171.

Tucker v. Mississippi State Bar, 577 So.2d 844 (Miss.,1991) - Charging excessive contingency fees, depositing fees into personal checking account and failing to report them to law firm, and using monies for payment of personal obligations warrant disbarment.

25. Abioto deliberately and knowingly withheld information from Plaintiff Newsome regarding the fact that the Tennessee Bar as well as the Mississippi Bar had censured her. Information which is pertinent and crucial and such in which a reasonable mind may conclude the Plaintiff was entitled to know. See **EXHIBIT "C"** attached hereto and incorporated by reference. *Baker v. Humphrey,* 11 Otto 494 (1879) - An attorney must promptly advise his client whenever he has information which it is

important the client should receive.

> *Mississippi Bar v. Abioto,* 2007 WL 3293346 (Miss.,2007) - Public reprimand was appropriate reciprocal discipline in Mississippi, for attorney who had been publicly censured in Tennessee for failing to keep adequate trust account records, misplacing client property, and being held in contempt of court for failing to return two videos to client. State Bar Discipline Rule 13; Tenn.Sup.Ct.Rules, Rule 8, Rules of Prof.Conduct, Rules 1.15 and 8.4(a)(d); Tenn.Code of Prof. Resp., DR 1-102(A)(1)(6), 9-102(A)(B).
>
> *Tyson v. Moore,* 613 So.2d 817 (Miss.,1992) - Attorney's duty of loyalty to client is fiduciary in nature, and includes duty to comply with any valid contract with client.
>
> *Baker Donelson Bearman & Caldwell, P.C. v. Muirhead,* 2006 WL 177593 (Miss.,2006)(BARBOUR) - An attorney generally owes the client any duties created by his contract with his client.

Moreover, a reasonable mind given the facts, evidence and legal conclusions in this instant lawsuit, as well as opposing counsel's correspondence, that they were aware of the action the Tennessee Bar and the Mississippi Bar had taken against Abioto, and, thus, with such knowledge may have used such information as a leverage and;or bargaining chip against Abioto to obtain an unlawful withdrawal and dismissal of this lawsuit.

26. Plaintiff had the right to expect from Abioto based upon the contract/ agreement entered into: (a) Abioto would be loyal, preserve documents/property, maintain confidentiality and avoid conflicts; (b) would represent her in a diligent manner; (c) would be competent in representation; (d) adhere to duty of candor, etc. However, instead Abioto merely abandoned the Plaintiff and left Plaintiff to fin for herself without the legal expertise she possesses as an attorney. Taking the Plaintiff's money and running – possibly spending it on matters clearly unrelated to the representation of the Plaintiff.

> *Shah v. Mississippi Bar,* 919 So.2d 59 (Miss.,2005) - Attorneys owe the following ethical duties to clients: (1) the duty of loyalty, including preserving the client's property, maintaining confidentiality, and avoiding conflicts; (2) the duty of diligence; (3) the duty of competence; and (4) the duty of candor. Rules of Prof.Conduct, Rules 1.1, 1.3, 1.4, 1.15, 8.4.
>
> *Shah v. Mississippi Bar,* 919 So.2d 59 (Miss.,2005) - For purposes of determining appropriate sanction in attorney disciplinary proceedings, attorney's failure to file notice of appeal on behalf of client violated attorney's duty of diligence. Rules of Prof.Conduct, Rules 1.3, 1.4.

Shah v. The Mississippi Bar, 962 So.2d 514 (Miss.,2007) - Three-year suspension from practice of law was appropriate discipline for attorney's failure to file complaint on client's behalf, or to communicate with client despite client's repeated attempts to gain information about his case, in violation of rules of professional conduct, given attorney's history of professional misconduct and necessity to protect the public, as well as administration of justice. Rules of Prof.Conduct, Rule 1.2(a), 1.3, 1.4, 8.1(b), 8.4(a, c).

Shah v. Mississippi Bar, 919 So.2d 59 (Miss.,2005) - For purposes of determining appropriate sanction in attorney disciplinary proceedings, attorney's knowing violation of duty of diligence, resulting in serious or potentially serious injury to client, weighed in favor of disbarment. Rules of Prof.Conduct, Rules 1.3, 1.4.

Wilbourn v. Stennett, Wilkinson & Ward, 687 So.2d 1205 (Miss.,1996) - To recover in a legal malpractice case, it is incumbent upon the plaintiff to prove by a preponderance of evidence: existence of a lawyer-client relationship; negligence on the part of the lawyer in handling client's affairs entrusted to him; and proximate cause of the injury.

Lancaster v. Stevens, 961 So.2d 768 (Miss.App.,2007) - To recover for legal malpractice, a plaintiff must prove by a preponderance of evidence the following: (1) existence of a lawyer-client relationship; (2) negligence on the part of the lawyer in handling his client's affairs entrusted to him; and (3) proximate cause of the injury.

Therefore, Plaintiff request this Court exercise its inherent power and discretion and have Abioto's statement in said paragraph stricken and/or statements within Abioto's Motion to Withdraw stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in ***bad faith, is legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers"). . .***

TRIAL:

If the laws permits, the Plaintiff request a jury trial on all issues so triable as a matter of law.

WHEREFORE, PREMISES CONSIDERED, for the above and foregoing reasons, Plaintiff moves this Court for the following relief:

a. Strike the statements Abioto's *Motion to Withdraw,* including: Opening Paragraph; Paragraphs numbered 1., 2., 4.[2], 5., 6. and 7; and closing paragraph beginning,, "Wherefore premises considered, counsel herein prays" and the relief sought in said

[2] Incorrectly numbered – No. 3 omitted.

closing paragraph. Furthermore, Abioto's Motion to Withdraw was provided in *bad faith* and she knew and/or should have known upon filing same, that it could not be sustained and that there was no hope of succeeding. Said Motion to Withdraw was provided for purposes of sham/frivolousness, to deprive Plaintiff legal representation until the completion of this lawsuit, delay, hindering proceedings, malicious intent, obstructing the administration of justice, needlessly increasing the costs of litigation, to deprive Plaintiff equal protection of the laws and due process of laws, and does not present any facts, evidence or legal conclusion(s) to sustain the arguments made and the relief sought through her pleading.

b. Plaintiff moves this Court to apply the "**snapshot rule**," its inherent powers and other power granted it under the statutes/laws governing said matters and issue the appropriate Rule 11 sanctions of and against Abioto. If permissible, Plaintiff moves this Court to sanction Abioto in the amount of $20,000.00 or an amount in which this Court deems just, proper and fair considering the violations complained of herein. Said sanction being applicable given the facts, evidence and legal conclusions to support Abioto's outrageous conduct and violation of the Mississippi Code of Professional Conduct.

c. Plaintiff moves this Court to investigate this matter and render the proper relief to deter such actions by Abioto.

d. Plaintiff moves this Court to issue the applicable sanctions of and against Abioto, up to including reporting her to the Mississippi Bar and recommending sanctions to include, "disbarment," "suspension," "contempt," and/or the maximum punishment allowed to deter such blatant judicial abuses and violation of the Code and/or laws governing attorney conduct.

e. If permissible, Plaintiff moves this Court for fees for the cost, expense incurred in having to defend against Motion to Withdraw.

f. Any and all other relief permissible under the laws to deter the wrongs complained of herein.

g. Jury Trial Demanded on all Triable Issues.

Respectfully submitted this ~~8th~~ 2nd day of **April, 2008**.

VOGEL NEWSOME, Plaintiff

Vogel Newsome

Wanda Abioto, MSB No. 8156
ABIOTO LAW CENTER
2353 Syon
Memphis, Tennessee 38119
Phone: (901) 725-3719
Facsimile: (901) 767-4441
E-Mail: Abioto@hotmail.com
COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the forgoing pleading was mailed via U.S. Mail first-class mail on:

Lanny R. Pace, Esq.
STEEN DALEHITE & PACE, LLP
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Post Office Box 900
Jackson, Mississippi 39205
Counsel for Defendants Spring Lake Apartments and The Bryan Company

Clark Monroe, Esq.
Benny M. "Mac" May, Esq.
DUNBARMONROE, PLLC
1855 Lakeland Drive, Suite P-121
Jackson, Mississippi 39216
Counsel for Defendant Melody Crews

Dated this 2nd day of **April, 2008.**

Vogel Newsome
VOGEL NEWSOME

DunbarMonroe, PLLC

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February 19, 2007

Wanda Abioto
2353 Syon
Memphis, TN 38119

Via Facsimile (901) 791-2248 and U.S. Mail
Also via abioto@hotmail.com

Re: ***Vogel Newsome v. Melody Crews, et. al.***, Civil Action No. 3:07cv00560

Dear Ms. Abioto:

This letter concerns the case you purportedly filed against my clients Melody Crews and Dial Equities, Inc. asserting certain Fair Housing Act violations, among other things. I am attaching to this letter a letter from your client, Mrs. Newsome, to the Clerk of the United States District Court providing six (6) filings which *she signed* with her name over *your* signature block. I attach only the first four (4) of those filings. I note Vogel Newsome carbon copied you on the filings as well.

Vogel Newsome represented to the Court you were sick so she was making the filings for you. This implies, to me, that you have read and **approved** the content of those filings which defame and make unprofessional accusations against a siting United States Magistrate Judge. This is wholly unacceptable. I have called you today and yesterday about this and you have ignored me. I emailed you on February 14, 2008 and again today. You have failed to respond. I have also noted that you did not even sign the Complaint. **Rather it appears your client signed your name to the initial complaint. Do you even represent her?**

Therefore, please accept this letter as my final attempt to request that you either contact me and discuss this or make arrangements with the Court to withdraw these accusations and confirm your involvement as counsel for Ms. Newsome. If you fail to respond on or before Thursday, February 21, 2008 by 5:00 p.m. then I will consider your silence to be ratification of the attached filings and will advise the Court you have failed to dispute your involvement in these accusations. I also demand you sign the Complaint and all submitted motions of record to date.

I do not believe I can overstate to you how critical it is that you clear up this matter immediately. I look forward to your immediate response to me or via filings with the Court in this matter.

Cordially,

DunbarMonroe, PLLC

Clark Monroe

GCM/mfg
Enclosures
cc: Lanny Pace

DUNBARMONROE, PLLC

ATTORNEYS AT LAW

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February 21, 2008

Wanda Abioto
2353 Syon
Memphis, TN 38119

Via Facsimile (901) 791-2248 and U.S. Mail
Also via abioto@hotmail.com

Re: ***Vogel Newsome v. Melody Crews, et. al.,*** Civil Action No. 3:07cv00560

Dear Ms. Abioto:

This confirms your call yesterday regarding my letter to you of February 19, 2008. In that call you confirmed to me that you authorized the filing of the complaint in this matter. You also advised you presently represent Mrs. Newsome and that you authorized Mrs. Newsome to sign your name to the initial Complaint and send it to the Court for filing on your behalf as her lawyer.

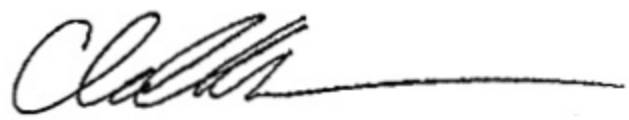
You also advised you did not know about the subsequent filings in this case made by Mrs. Newsome in which she made numerous accusations against United States Magistrate Judge Anderson. You have advised you do not endorse her statements made therein. You also advised that you would be filing a Notice of Withdrawal as counsel as a result of these actions.

As I expressed to you yesterday, we will not agree that you may withdraw as counsel unless you dismiss the entire lawsuit. Pursuant to the Local Rules for the Northern and Southern District of Mississippi, Rule 83.1(B)(3) "when an attorney enters an appearance in a civil action, he or she shall remain as counsel of record until released by formal order of the court." The rule requires that a motion must be filed. It is our position that you knew Mrs. Newsome would make unauthorized filings when you agreed to file this suit. We also take the position that you knew that she had already filed Civil Action No. 3:07cv00099 and that the case you filed was based upon the same facts and circumstances. You were fully aware that Mrs. Newsome would be a difficult client and one you could not control. However, notwithstanding this knowledge, you chose to sue my clients and instigate this now third frivolous lawsuit against my client on Mrs. Newomse's behalf. Therefore, unless the Court releases you we have no intent of agreeing to your withdrawal as counsel. Also, even if released, you remain responsible for the filing of the Complaint pursuant to Rule 11 and we are going to seek sanctions under that rule.

I regret this position is necessary, but the costs to my client to date have exceed the bounds of reasonableness and much of it is directly due to your knowingly filing this frivolous suit and presumably encouraging Mrs. Newsome's belief that she has a valid claim.

Cordially,

DunbarMonroe, PLLC



Clark Monroe

GCM/mfg
Enclosures
cc: Lanny Pace

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2007-BD-01226-SCT

THE MISSISSIPPI BAR

v.

WANDA X. ABIOTO

ATTORNEY FOR APPELLANT:	ADAM B. KILGORE
ATTORNEY FOR APPELLEE:	PRO SE
NATURE OF THE CASE:	CIVIL - BAR MATTERS
DISPOSITION:	PUBLIC REPRIMAND AND ASSESSMENT OF COSTS - 11/08/2007
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

CARLSON, JUSTICE, FOR THE COURT:

¶1. This matter involves reciprocal discipline. Wanda X. Abioto, a Mississippi attorney, was publicly censured by the Supreme Court of Tennessee for failing to keep adequate trust account records, misplacing client property, and being held in contempt of court for failing to return two videos to her client. Thereafter, the Mississippi Bar filed a formal complaint seeking sanctions against Abioto pursuant to Rule 13 of the Rules of Discipline for the Mississippi State Bar (MRD). Upon consideration, we find that Abioto should receive a public reprimand for her unethical conduct in Tennessee.

FACTS AND PROCEEDINGS

¶2. The facts of this case are not disputed. On August 3, 2005, Abioto was served with a Petition for Discipline by the Board of Professional Responsibility of the Supreme Court of Tennessee. Thereafter, on September 24, 2006, Abioto entered into a Conditional Guilty Plea in two consolidated causes, wherein Abioto admitted her guilt in "failing to keep adequate trust account records, misplacing client property, and being held in contempt of court for failing to return two (2) videos to [her] client, thereby violating the following: DR 1-102(A)(1)(6) and DR 9-102(A)(B) of the Code of Professional Responsibility and Rules 1.15 and 8.4(a)(d) of the Tennessee Rules of Professional Conduct." The Conditional Guilty Plea also set out the terms of Abioto's discipline. Particularly, the Conditional Guilty Plea stated that, if approved, Abioto would be publicly censured and would be required to reimburse the Board of Professional Responsibility the sum of $623.52, representing the expenses incurred by the Board in prosecuting this action. The Supreme Court of Tennessee accepted Abioto's Conditional Guilty Plea and publicly censured Abioto by an Order of Enforcement executed by Justice Janice M. Holder, for the Court, which Order was entered on May 16, 2007.

¶3. Abioto's public censure in Tennessee constitutes a ground for the imposition of discipline by the Supreme Court of Mississippi pursuant to MRD 13. On July 20, 2007, the Mississippi Bar initiated the present action by filing a Formal Complaint against Abioto seeking reciprocal discipline pursuant to MRD 13. Process was issued by the Clerk of this Court on July 20, 2007, and the return on the summons reveals that Abioto personally was

served with process and copies of the Formal Complaint and attachments by a process server on August 1, 2007. Abioto has filed no response to the Mississippi Bar's Formal Complaint.

DISCUSSION

¶4. In bar disciplinary matters, this Court has exclusive and inherent jurisdiction. ***Miss. Bar v. Hodges***, 949 So. 2d 683, 685 (Miss. 2006); ***Miss. Bar v. Inserra***, 855 So. 2d 447, 450 (Miss. 2003); MRD 1(a). "We review matters of attorney discipline de novo, including those arising out of reciprocal discipline." ***Hodges***, 949 So. 2d at 685 (citing ***Inserra***, 855 So. 2d at 450). Since this Court conducts a de novo review, we are free to impose any form of discipline which we feel will "best serve the interests of the Bar and public." ***Hodges***, 949 So. 2d at 685.

¶5. While "[t]he burden is usually on the Mississippi Bar to show by clear and convincing evidence that an attorney's actions constitute professional misconduct," such is not the case when the Mississippi Bar files a complaint pursuant to MRD 13. ***Miss. Bar v. Pels***, 708 So. 2d 1372, 1374 (Miss. 1998); ***Miss. Bar v. Alexander***, 669 So. 2d 40, 41 (Miss. 1996); ***Goodsell v. Miss. Bar***, 667 So. 2d 7, 9 (Miss. 1996). Rule 13 states, *in toto*:

> When an attorney should be subjected to disciplinary sanctions in another jurisdiction, such sanction shall be grounds for disciplinary action in this state, and certification of such sanction by the appropriate authority of such jurisdiction to the Executive Director of the Bar or to the Court, shall be conclusive evidence of the guilt of the offense or unprofessional conduct on which said sanction was ordered, and it will not be necessary to prove the grounds for such offense in the disciplinary proceeding in this state. The sole issue to be determined in the disciplinary proceeding in this state shall be the extent of the final discipline to be imposed on the attorney, which may be less or more severe than the discipline imposed by the other jurisdiction.

MRD13. Therefore, no further fact-finding is required by us as to the guilt of the offense for which Abioto finds herself before us today. As a result, the sole issue before this Court is the extent of the final discipline to be imposed upon Abioto, which may be more or less severe than the sanction imposed by Tennessee. The Mississippi Bar has expressed no view as to the discipline to be imposed upon Abioto.

¶6. That being said, inherent within the language of MRD13 is that this Court is not bound by the findings of the foreign jurisdiction in determining an appropriate sanction. ***Pels***, 708 So. 2d at 1374. In fact, we have a set out nine criteria in assessing punishment, which include the following:

(1) the nature of the conduct involved;
(2) the need to deter similar conduct;
(3) the preservation of the dignity and reputation of the profession;
(4) the protection of the public;
(5) the sanctions imposed in similar cases;
(6) the duty violated;
(7) the lawyer's mental state;
(8) the actual or potential injury caused by the lawyer's misconduct; and
(9) the existence of aggravating or mitigating circumstances.

James v. Miss. Bar, 962 So. 2d 528, 535 (Miss. 2007) (citing ***Goeldner v. Miss. Bar***, 891 So. 2d 130, 135 (Miss. 2004)). While this list is extensive, it is not exhaustive. We may consider other factors which may be appropriate, depending on the fact scenario.

¶7. We no doubt have looked with extreme disfavor upon a lawyer's conversion or commingling of clients' funds. *See, e.g.*, ***Miss. Bar v. Sweeney***, 849 So. 2d 884 (Miss. 2003); ***Haimes v. Miss. Bar***, 601 So. 2d 851 (Miss. 1992); ***Miss. State Bar Ass'n v. Strickland***, 492 So. 2d 567 (Miss. 1986). On the other hand, we have found that the facts

and circumstances peculiar to a particular case involving the lawyer's commingling of a client's funds warranted imposition of sanctions less severe than the sanctions recommended by a complaint tribunal. ***Catledge v. Miss. Bar***, 913 So. 2d 179 (Miss. 2005). In essence, on a case-by-case basis, we can give more weight or less weight to aggravating or mitigating circumstances in order to decide the appropriate sanction to impose upon a lawyer who is found guilty of misconduct by violating his or her oath of office or the Code of Professional Responsibility. ***Pels***, 708 So. 2d at 1375.

¶8. Returning to today's case, considering the violations of failing to keep adequate trust account records and misplacing client property, it is critical that discipline be imposed for the duties violated to deter similar misconduct by members of the Bar in the future, to preserve the dignity and reputation of the legal profession, and to protect the public from such misconduct. With this being said, we note that the Bar does not allege, nor does the record before us reveal, the details of the ethical violations to which Abioto offered a conditional plea of guilty in Tennessee. We also find nothing in the record concerning Abioto's mental state; the actual or potential injury caused by the lawyer's misconduct; or the existence of aggravating or mitigating circumstances. Neither does the record reveal whether Abioto heretofore has been sanctioned by a tribunal in this state or a foreign jurisdiction. We also note that, as opposed to charges of conversion or commingling a client's funds or property, the Tennessee charges before us involve, *inter alia*, failing to keep adequate trust account records and misplacing client property. Therefore, we conclude from the record before us that there is no reason to stray from the discipline imposed by the

Supreme Court of Tennessee. We thus find that the appropriate sanction for Abioto is one of public reprimand.

CONCLUSION

¶9. For the reasons stated, we find that Wanda X. Abioto should be publicly reprimanded and assessed with all costs and expenses occasioned by the Mississippi Bar's filing of the Formal Complaint. MRD 8.6 (ii) provides that a lawyer shall be publicly reprimanded by the circuit court of the disciplined attorney's county of residence. The Bar's Formal Complaint alleged that Abioto could be served with process at 1661 International Place Drive, Suite 400, Memphis, Tennessee, 38120. The return on the summons in this case reveals that the process server personally served Abioto with process in Shelby County, Tennessee. The Mississippi Bar's website states Abioto's address as 2353 Syon, Memphis, Tennessee, 38119. The pleadings before us from the Tennessee tribunal state Abioto's address as being 908 Millers Bend, Memphis, Tennessee, 38126. On the other hand, a LEXIS search reveals that of the last eleven cases appealed and decided by this Court or the Court of Appeals, in which Abioto has been listed as an attorney of record, eight of those eleven cases originated in the Circuit Court of DeSoto County; one originated in the Chancery Court of DeSoto County; one originated in the Circuit Court of Bolivar County; and one originated in the Circuit Court of Wayne County.

¶10. Therefore, we direct that Abioto shall appear on the first day of the next term of the Circuit Court of DeSoto County after which this decision is final, to be publicly reprimanded in open court by the presiding judge. Likewise, the Bar shall recover from Abioto all costs

of these proceedings occasioned by the Bar's filing of the Formal Complaint, upon the Bar's proper filing of a motion within ten days after this decision is final.

¶11. WANDA X. ABIOTO SHALL BE PUBLICLY REPRIMANDED IN OPEN COURT BY THE PRESIDING JUDGE ON THE FIRST DAY OF THE NEXT TERM OF THE CIRCUIT COURT OF DESOTO COUNTY AFTER THIS DECISION IS FINAL AND ASSESSED WITH ALL COSTS.

SMITH, C.J., WALLER AND DIAZ, P.JJ., EASLEY, GRAVES, DICKINSON, RANDOLPH AND LAMAR, JJ., CONCUR.

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT – JACKSON DIVISION

VOGEL NEWSOME PLAINTIFF

V. CIVIL ACTION NO. 3:07-cv-00099-TSL-LRA

MELODY CREWS, ET AL. DEFENDANTS

PLAINTIFF'S OBJECTION TO AND MOTION TO STRIKE STATEMENTS AND MATERIALS OF DEFENDANT MELODY CREWS' MOTION FOR SHOW CAUSE HEARING AND FOR GENERAL RELIEF AND REQUESTS FOR RULE 11 SANCTIONS OF AND AGAINST DEFENDANT CREWS AND HER COUNSEL CLARK MONROE[1]
and
JURY TRIAL DEMANDED ON TRIABLE ISSUE(S)

COMES NOW Plaintiff, Vogel Newsome ("Plaintiff" and/or "Newsome"), as ***a party*** to this instant action, upon being advised that her attorney, Wanda Abioto ("Abioto"), is ill (health issues) and recently being confronted with possible withdrawal issues by said attorney and files this her *Objection To and Motion to Strike Statements and Materials of Defendant Crews' Motion for Show Cause Hearing and for General Relief and Requests for Rule 11 Sanctions of and Against Defendant Crews and Her Counsel Clark Monroe and Jury Trial Demanded on Triable Issue(s)* (hereinafter known as "MTSMFSC") pursuant to Rule 12(f) of the Federal Rules of Civil Procedure ("FRCP") and any and all governing statutes/laws relating to said matters. Plaintiff through this instant pleading, request this Court exercise its own discretion and issue the applicable sanctions (if permissible – via "**snapshot rule**" and "**inherent power**") by laws/statutes of and against this Defendant Melody Crews ("Defendant Crews" and/or "Crews") and/or her counsel, Clark Monroe ("Monroe") – (collectively referred to as "Defendant Crews/Monroe" and/or "Crews/Monroe"), pursuant to Rule 11 of the FRCP and/or statutes/laws governing said matters.

> **Conduct Measured at Time of Presentation:** *Skidmore Energy, Inc. v. KPMG,* 455 F.3d 564, 569-570 (**5th** Cir. 2006) – **Under the "snapshot" rule, sanctions based on a frivolous pleading were**

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[1] NOTE: Boldface, italics and underline, boxing, etc. represents "emphasis" added. Use of Federal Procedural Forms (Lawyers Edition), WestLaw and other resource materials in preparation of this instant pleading.

Exhibit "9"

> **proper because the lack of legal and evidentiary support for the pleading existed at the time it was filed.** The district court found that the claims lacked both **legal** and **factual** support and imposed more than $500,000 in sanctions against plaintiffs and their counsel, based on the defendants' reasonable expenses incurred in litigating against the claims. . . .This test focuses on the instant when the signature is placed on the document, and the state of mind of the signer at that time. The test ensures that Rule 11 liability is assessed only for a violation existing at the moment of filing. The district court had clearly concluded that the pleadings were frivolous when filed. The fact that they continued to lack evidentiary support throughout the proceedings only underscored the violation.
>
> **Inherent Power of Court to Impose Sanctions – Bad Faith Required:** *Amlong & Amlong, P.A. v. Denny's, Inc.*, 457 F.3d 1180, 1202-1203 (2006) – Sanctions could not be imposed under the court's inherent powers without an explicit finding of bad faith. . . . In particular, before a court may impose sanctions on an attorney under its inherent powers, the court must make a finding of bad faith.

Plaintiff further **OBJECTS** to Defendant Crews' *premature* **"CONSOLIDATION"** of Civil Actions 3:07-cv-00099 and 3:07-cv-000560, AS EVIDENCED IN THIS CASE IN THE STLEY filed in this Court in her *Motion For Show Cause Hearing and for General Relief* ("MFSCH"). These are two separate and distinct civil lawsuits filed in this Court arising out of separate and direct OVERT independent actions. These two matters have not been consolidated and separate pleadings should have been individually filed in each lawsuit rather than combined and/or consolidated as Crews has done here. Keeping in mind that separate filings in good faith would have been required if Crews truly believed she was entitled to the relief sought through MFSCH. Therefore, ***WITHOUT WAIVING*** SAID OBJECTION, Plaintive moves this Court to pursuant Rule 12(f) of the FRCP to:

> Strike the statements and materials in *Defendant Melody Crews' Motion for Show Cause Hearing and for General Relief,* including: Opening Paragraph; Paragraphs numbered 1., 2., 3., 4., 5. and supporting material provided at/in Exhibit A, 6., 7., 8., 9., 10., 11., 12 – and supporting materials provided at/in Exhibit A., 13 – and supporting materials provided in Exhibit B, 14., 15. and its subparagraphs lettered a., b., c., d., e., and e. (sic); and closing paragraph beginning,, "WHEREFORE, PREMISES CONSIDERED, Melody Crews" and the relief sought in said closing paragraph. Furthermore, Defendant Crews' MFSCH was provided in *bad faith* for purposes of sham/frivolousness, harassment, delay, hindering proceedings, malicious intent, obstructing the administration of justice to prejudice this Court against her, increasing the costs of litigation, to deprive Plaintiff equal protection of the laws and due process of laws, and does not present any facts, evidence or legal conclusion(s) to sustain the arguments made and the relief sought through her pleading.

Plaintiff further states the following in support of this instant MTSMFSC and the relief sought herein:

1. Plaintiff is a **party** to this action and thereby authorized by statutes/laws to file said pleading and sign in that she is a party in this action, has personal knowledge as to the claims and evidence presented in this instant pleading, the Complaint filed in this instant lawsuit, her subsequent pleadings and is subject to the provisions of Rule 11 of the FRCP.

Plaintiff is aware that Defendant Crews' counsel most recent attacks on her and her counsel and how such unlawful/unethical practices before this Court is now being masked through this Defendant's MFSCH he has filed on her behalf in this lawsuit. Defendant Crews/Monroe knew and/or should have known that Plaintiff is entitled to sign and file pleadings in this action, in that she/he clearly appears to have knowledge of the United States Supreme Court's decision in *Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, 498 U.S. 533, 111 S.Ct. 922 (1991) and perhaps other legal conclusions to support said knowledge. **(EMPHASIS ADDED).** (See Doc. 34 at ¶11); however, *willfully* and *deliberately* **withheld such knowledge** obtained from this Court as she/he relied upon "selective" inclusions in the use of this citation. See **EXHIBIT "1"** – *Business Guide*, attached hereto and incorporated by reference

2. This instant MTSMFSC is submitted in good faith and is not provided for purposes of delay, hindering proceedings, obstructing the administration of justice, or needlessly increasing the costs of litigation, etc.. Moreover, said pleading is supported by the investigation/research and the facts, evidence and/or legal conclusions presented herein.

3. This instant pleading is being filed to preserve the rights of the Plaintiff secured to her under the United States Constitution, Civil Rights Act and other laws governing said matters to assure she receives equal protection of the laws and due process of laws. Plaintiff has had to file this pleading in that valid and legal concerns regarding her attorney's handling of matter warrant's the necessity of said filing to preserve the rights of Plaintiff and to protect her from any possible injury/harm which may have resulted as a direct and proximate result of Abioto's failure to comply with the laws in the representation of Plaintiff.

Plaintiff believes a reasonable mind may conclude that Congress and/or the lawmakers did not intend for clients to put the entire life of their complaints/claims in the hands of their attorney without any participation and/or interaction from them. Plaintiff has **NEVER** required nor requested that her attorney violate the laws/statutes in representing her and clearly is offended by the accusations leveled by Defendant Crews/Monroe through her MFSCH.

4. Plaintiff believes that the **Fifth Circuit** Court of appeals would find the actions of Defendant Crews/Monroe and other Defendants and Defendants' counsel in this action ***reprehensible*** and ***disturbing***.

5. It is important to note that MFSCH was only filed on behalf of Defendant Crews while Monroe also represents Dial Equities, Inc. ("Dial Equities") in this lawsuit. Dial Equities would be wise to distance itself from him, in that he is *a walking liability* to those who he comes into contact with and solicit their business to allow

them to represent them against actions brought by the Plaintiff. What is certain, Monroe has clearly taken Defendant Crews' position as a party tot his action to shielded his unlawful/illegal and unethical practices through his representation of her.

6. The opening paragraph of Crews' MFSCH is to be stricken. *Plaintiff request this Court exercise its inherent power and discretion and have Defendant Crews' statement(s) and/or material(s) indicated here as well as above stricken and/or statements within Defendant Crews' MFSCH stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in* ***bad faith****, is* ***legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers")****, is sham/frivolous and provided for unlawful and unethical purposes, and does not present any facts, evidence or legal conclusion(s) to support defenses asserted. The information in MFSCH was provided for frivolous filings and misuse of the judicial process and is neither certified as required under Rule 11. Defendant Crews/Monroe failed to make reasonable inquiry into to the laws and facts underlying the MFSCH filed. Thus, moving this Court to issue the applicable sanctions pursuant to Rule 11 of the FRCP and/or governing laws of and against Defendant Crews and her counsel, Clark Monroe.* (hereinafter contents referenced as "*Plaintiff request this Court exercise its inherent power and discretion and have Defendant Crews' statement(s) and/or material(s) indicated here as well as above stricken and/or statements within Defendant Crews' MFSCH stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in* ***bad faith****, is legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers")*. . . ")

7. ¶ 1. in its entirety of Crews' MFSCH is to be stricken. Said paragraph was merely provided for name calling and unlawful/illegal and unethical purposes. While Crews/Monroe have for instance used such labeling of the Plaintiff as a "serial litigator," they have produced nothing to substantiate such assertion. Plaintiff believes that a reasonable mind as well as the **Fifth Circuit** Court of Appeals will find that such labeling of the Plaintiff is uncalled for. Moreover, that there is sufficient evidence in the record of this Court provided through this instant lawsuit to support that Crews'/Monroe's knowledge of past litigation by the Plaintiff was used to commit "civil" and "criminal" wrongs against her. Moreover, that the **Fifth Circuit** would be APPALLED/DISTURBED/DISAPPOINTED, etc. to know that Defendant Crews/ Monroe used decisions by its Court to **pad** their "civil" and "criminal" wrongs rendered the Plaintiff. While Defendant Crews/Monroe have labeled the Plaintiff a "serial litigator," Plaintiff believes a reasonable mind as well as the Fifth Circuit will find that over the past **20** years, the filing of approximately **four (4)** lawsuits by the Plaintiff (and now the two lawsuits filed in this Court as it relates to Civil Actions 3:07-cv-00099 and 3:07-cv-00560) is sufficient to label her a "*serial* litigator." Moreover, that the two (2) lawsuits filed in this Court are warranted. Furthermore, Plaintiff believes that the Fifth Circuit would find that she has been successful in obtaining "evidence" which is difficult to come by to support her claims/counts and the relief sought through her Complaint and her subsequent pleadings filed in this instant lawsuit. Such labeling of Plaintiff is addressed further down in this instant pleading. A reasonable mind may conclude, with such labeling, Crews/Monroe knew that Plaintiff would research and/or investigate such defenses and provide rebuttal (if necessary) to such.

No, it is Defendant Crews' counsel (Monroe) who is **serial** stalker/predator – following Plaintiff from ***job-to-job, attorney-to-attorney*** - harasser, abuser of the judicial system/process, etc. (as the list can go on and on) who uses his clients (such as Defendant Crews and Dial Equities, Inc. – with their permission) to ***hood*** his fetishes.

Monroe, who clearly should have his picture posted on the appropriate *offenders* website for such abuses, unlawful/illegal and unethical fetishes. No while hooded at night, once the hood is removed during the day, it is easily noticeable from his countenance/face, what is really in him and what he is really about. While he appears to be well-groomed, intelligent, smug, etc., BE WARNED, he is far from that and is a *walking liability* to whomever comes into contact with him in defending claims brought by the Plaintiff. So beware – conspirators, co-conspirators, clients, employers, law firms, citizens of this great country, etc. – engaging in any unlawful/illegal and unethical practices with this abuser and stalker/predator, may very well set you up to share in the liability Monroe attracts in his pursuits against the Plaintiff.

While Defendant Crews' counsel has labeled the Plaintiff as a *"serial litigator"* there ***is nothing*** in the record to support his opening slander and false misrepresentation of the Plaintiff. While he attempts to mislead this Court and *distort* and/or *fabricate* information on the Plaintiff, it is clear to the Plaintiff he has deliberately failed to mention claims brought against other/certain Defendants to this action, for instance, that Defendant *Hinds County, Mississippi* is not a new party or defendant to the Mississippi federal courts. For example, this Court can find a least 71 cases where this party is a defendant before the federal courts in Mississippi. See **EXHIBIT "2"** attached hereto and incorporated by reference as if set forth in full herein. That Defendant *Malcolm McMillin* is not a new party or defendant to the Mississippi federal courts. For example, this Court will find a least **105** cases where this party is a defendant before the federal courts in Mississippi. See **EXHIBIT "3"** attached hereto and incorporated by reference as if set forth in full herein. Neither is Defendant Dial Equities, Inc. new as party to the federal courts. See **EXHIBIT "4"** attached hereto and incorporated by reference as if set forth in full herein. Plaintiff believes that an investigation into these civil actions brought against these Defendants may reveal that court(s) did not allow such abuses (as that in which this Plaintiff is subjected to in this instant lawsuit) by these Defendants to occur and/or go unaddressed. Especially, in cases where Defendants and Plaintiffs in those actions are represented by attorney – No, the personal bias and prejudice towards this Plaintiff is so apparent.

Plaintiff request this Court exercise its inherent power and discretion and have Defendant Crews' statement(s) and/or material(s) indicated here as well as above stricken and/or statements within Defendant Crews' MFSCH stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in bad faith, is legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers")...

8. ¶ 2. in its entirety of Crews' MFSCH is to be stricken. The relief sought through said paragraph is legally insufficient, seeks this Court's participation in the infringement of rights secured to the Plaintiff under the United States Constitution and other laws governing the protection of her rights. Moreover, Crews'/Monroe's relief sought under this paragraph are efforts by them to unlawfully/illegally and unethically attempt to present a roadblock to prevent the Plaintiff from filing future lawsuits against them which they are aware of are *clearly inevitable*. Such relief by Crews/Monroe cannot be contributed to foresight because the Plaintiff has already

warned them that future legal actions in their willful, deliberate, malicious *participation* in the conspiracy to have her terminated from her employment with Page Kruger & Holland. Such conspiracy and wrong which is mentioned further down in this instant pleading.

Plaintiff request this Court exercise its inherent power and discretion and have Defendant Crews' statement(s) and/or material(s) indicated here as well as above stricken and/or statements within Defendant Crews' MFSCH stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in ***bad faith, is legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers").***. .

9. ¶ 3. in its entirety of Crews' MFSCH is to be stricken. Crews/Monroe is careful to be sure to label the Plaintiff as pro se. **Not** *in forma pauper* ("IFP") litigant in this instant lawsuit. (EMPHASIS ADDED). Because they know that the relief they have repeatedly sought, are defenses against those who file action(s) an *in forma pauperis* status. The Plaintiff is a paying litigant and has paid the required fee to bring this instant lawsuit. Therefore, she is not subject to the provisions and/or similar statutes/laws governing IFP litigants.

Plaintiff request this Court exercise its inherent power and discretion and have Defendant Crews' statement(s) and/or material(s) indicated here as well as above stricken and/or statements within Defendant Crews' MFSCH stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in ***bad faith, is legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers").***. .

10. ¶ 4. in its entirety of Crews' MFSCH is to be stricken. Defendant Crews/Monroe have produced no evidence where an Order/Judgment pursuant to Rule 54(b) of the MRCP was entered before Plaintiff's counsel, Abioto, in the Hinds County Court (Jackson, Mississippi – Civil Action No. 251-06-905) filed a Rule 41 "Voluntary" Dismissal action pursuant to Mississippi Rules of Civil Procedure ("MRCP") in the interest of Newsome in that state court action. A voluntary dismissal action which Defendant Crews failed to contest. It is important to note that there was a hearing in the Hinds County Court action on August 31, 2006. Following that hearing, both the Newsome and her attorney filed separate post-hearing pleadings to preserve the rights of Plaintiff. None of the post-hearing pleadings filed by either Newsome or Abioto were contested by the defendants in that lawsuit. Then on or about **September 15, 2006,** Abioto filed the following pleadings: (a) Notice of First Amended Complaint; (b) First Amended Complaint Jury Trial Demanded; and (c) Notice of Dismissal Without Prejudice.

Defendants Hinds County and Malcolm McMillin provided a copy of an Order from the Hinds County Court action executed on **September 27, 2006,** through their Motion for Security Costs filed in this instant lawsuit. A pleading which the Plaintiff has filed a timely rebuttal to and a matter still pending before this Court – as it appears, she may have to take this (illegal bond setting) matter to the Fifth Circuit Court of Appeals – who has in the past granted the Plaintiff *remand.* It is IMPORTANT TO NOTE: Said Order was executed by Barnett of the Hinds County Court action well **AFTER** – approximately **12 days** later - the Rule 41 "Voluntary" Dismissal filed by Abioto on behalf of her client. One guess, as to who instigated the execution of the Hinds County Court Order – just one guess. Correct. It was Defendant Crews'

counsel, Clark Monroe who instigated the signing of the ***delinquent*** September 27, 2006 Order by Judge Barnett. An Order not legally or lawfully binding in that the action had been dismissed at the time of execution. Who knows what *means of coercion* - threats, unlawful/illegal and unethical acts – Monroe committed to get Judge Barnett to execute the Order. What is clear, Judge Barnett was sure not to backdate the entry of said Order. So there is an execution of an Order in the Hinds County Court action on September **27,** 2006, ordering acts to be completed "within fifteen (15) days of the hearing on August 31, 2006 (*on or before September 15, 2006*) this matter is and shall be finally dismissed." See **EXHIBIT "5"** attached hereto and incorporated by reference. *Clearly, it does not make sense to order the carrying out of actions on dates* ***that have expired.*** *But again, that is Monroe at work again, harassing, insisting, forcing and demanding requests down the throat of the Court,* ***as that displayed in his letter of February 25, 2008 to this Court.*** See **EXHIBIT "6"** attached hereto and incorporated by reference as if set forth in full herein. Further supporting to what lengths Monroe would go to get what he wanted. However, to his disappointment, Barnett *would not* backdate execution of the Order. With such knowledge, Defendant Crews/Monroe and other Defendants continue to attempt to assert *res judicata* on ruling from the state court(s) that were not final judgments upon which they can base such a defense. They tried such a frivolous defense in the Hinds County Court action, alleging res judicata. The Justice Court which is not a court of record, nor one of competent jurisdiction and clearly lacking jurisdiction over the Plaintiff (who was defendant in that action).

While Defendant Crews/Monroe attempt. to underhandedly "insult" Plaintiff's counsel's legal experience and knowledge of the laws by stating, "has continued to feed Newsome's belief she has a claim. . .," Abioto has well of 20 years of legal experience. Such a statement is obvious of Monroe's efforts implying that Abioto, while an attorney, does not understand and neither can interpret and/or comprehend what the laws/statutes mean. That he and other Defendants counsel in this lawsuit are the only ones who has such knowledge and understanding.

Plaintiff request this Court exercise its inherent power and discretion and have Defendant Crews' statement(s) and/or material(s) indicated here as well as above stricken and/or statements within Defendant Crews' MFSCH stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in ***bad faith, is legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers").. .***

11. ¶ 5. and its supporting "Exhibit A" in its entirety of Crews' MFSCH is to be stricken. "Outrage." Monroe stating his mental feelings and state of mind/mind set **(EMPHASIS ADDED)**. Why? Because he found out that Plaintiff had filed pleadings in which she has a right to file in preserving her rights in this lawsuit.

It is obvious that Monroe is obsessed with the Plaintiff. He stalks her from job-to-job, from attorney-to-attorney at no ends. Informing Plaintiff's employer(s) of lawsuits filed by the Plaintiff and hoping that with such knowledge that employer(s) terminate the Plaintiff, as well, as informing Plaintiff's attorney(s) of legal actions brought by her and to and paint pictures of Plaintiff as being a "serial litigator." Monroe resorting to harassment, threats of disbarment – reporting Abioto to the Mississippi Bar. When will it stop? **How long** is this Court going to allow Monroe to *run amuck* before it and clearly proceed in a manner clearly in violation of the Code of Professional Conduct and/or other governing laws/statutes, officer of the Court and a

member of the Mississippi Bar? **How long?** It appears the defense strategies in the harassing of Plaintiff's counsel, contacting Plaintiff's employer have run their course and lost steam. No, Monroe has preyed on the weak, vulnerable and timid, etc. victims that he has so viciously devoured in his quest to destroy the life of the Plaintiff. In his recruitment for conspirators and/or co-conspirators, he simply requires they have a deep-rooted hatred, jealousy, envy, prejudice, etc. towards the Plaintiff. His outrage, merely is due to the fact that he failed in his efforts and at every corner he turns in the litigation brought by the Plaintiff he sees he is a ***big FAILURE***. He also is aware that Plaintiff will not allow him to harass, threaten or intimidate her. That being the "litigious" person he claims she is, rather than take matters into her own hands, she simply files the applicable lawsuits against the perpetrators that she believes caused her legal injury/harm.

The Plaintiff has a right to file and defend the lawsuits in which she has filed or have been filed on her behalf. Moreover, to see that she is well represented and her voice heard. Her recent February 11, 2008 filings are pleadings allowed under the laws governing the claims she assert; and, those in which she in good faith believe were necessary to file in the preservation of her rights secured/guaranteed under the United States Constitution and/or other governing laws to support the claims and relief sought.

Plaintiff request this Court exercise its inherent power and discretion and have Defendant Crews' statement(s) and/or material(s) indicated here as well as above stricken and/or statements within Defendant Crews' MFSCH stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in ***bad faith, is legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers").***. . .

12. ¶ 6. in its entirety of Crews' MFSCH is to be stricken. Plaintiff's signature occurs on the line ***below*** her name "Vogel Newsome, Plaintiff" because she is a party in this lawsuit. If signing on the line below her name as Plaintiff to the action is wrong or insufficient, Plaintiff is not aware of this Court notifying of any such error in this instant lawsuit or in Civil Action No. 3:07-cv-00560 filed in this Court. Abioto has not advised the Plaintiff that such a correction is warranted as to the signing of the pleading or that Plaintiff needs to resubmit the signature page with information below the line to be information requiring Plaintiff.

Plaintiff's believes her pleading(s) meets the "certification" requirements and provide information regarding investigation into the issues and research materials used in preparation thereof. Moreover, Plaintiff has tried to include such information in the first footnote (or shortly thereafter) in the pleadings that she files. Even if not provided, the Plaintiff takes the time to make said certifications in the pleadings being filed. As in this instant action, the vast legal conclusions, exhibits and facts set forth, are sufficient to state her claims and belief that the pleading(s) has been submitted in good faith.

Plaintiff request this Court exercise its inherent power and discretion and have Defendant Crews' statement(s) and/or material(s) indicated here as well as above stricken and/or statements within Defendant Crews' MFSCH stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in ***bad faith, is legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers").***. . .

13. ¶ 7. in its entirety of Crews' MFSCH is to be stricken. This instant action

was submitted on behalf of Newsome on or about **September 15, 2007**. Therefore, it is not clear what pleading this Defendant Crews/Monroe is asserting was filed in this action/lawsuit on **August 13, 2007**, because this date precedes the filing of the 00560 lawsuit. While Abioto is counsel of record in this lawsuit, as a matter of law, she is not the only one authorized to draft, sign and file pleadings in that action. Plaintiff, as a party to this action, is authorized to do so as well although she is represented and is subject to the provisions of Rule 11 of the FRCP. See **EXHIBIT "7"** – excerpt 28 USCA Rule 11 of the FRCP attached hereto and incorporated by reference. Neither is the Plaintiff aware that she or her attorney in this action violated any statutes/laws when Abioto authorized the Plaintiff to sign the Complaint and to get it filed in a timely manner. Plaintiff and her attorney (Abioto) in this action live in different states. It is important to note that the "ACKNOWLEDGMENT" provided in the Complaint filed in this lawsuit, was executed by the Plaintiff, certifying her review of the Complaint. The use of Defendant Crews and MFSCH filed on her behalf, is merely a **dilatory** defense/tactic used by Monroe to threaten the Plaintiff's attorney as evidenced in his correspondence of February 19, 2008 and February 21, 2008. Who knows how many more of these belligerent letters Abioto has received from Monroe or other opposing counsel in the lawsuits file by the Plaintiff.

Plaintiff request this Court exercise its inherent power and discretion and have Defendant Crews' statement(s) and/or material(s) indicated here as well as above stricken and/or statements within Defendant Crews' MFSCH stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in ***bad faith, is legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers")***. . ..

14. ¶ 8. in its entirety of Crews' MFSCH is to be stricken. On or about August 13, 2007, Magistrate Sumner entered an Order (Doc. No. 41 of Civil Action 3:07-cv-00099 ["0099"]) denying Plaintiff's Motion to Strike (Doc. No. 28); granting Second Defendants Crews and Dial Equities, Inc.s' Motion for Extension of Time to Answer (Doc. No. 40); granting Defendants Hinds County and Malcolm McMillan's Motion for Bond (Doc. No. 9); granting Defendants Hinds County and Malcolm McMillan's Motion to Stay (Doc. No. 10); granting Defendants Melody Crews and Dial Equities Joinder to Motion to Stay Proceedings filed by Defendant Hinds County and Malcolm McMillan; granting Motion for Joinder in Motion for Security of Costs and denying Motion for Security of Attorney Fees by Defendant Crews and Dial Equities; and denying Plaintiff's Motion to Strike Motion to Stay of Defendants Hinds County and Malcolm McMillan; and staying proceedings until Plaintiff posted bond.

On or about August 22, 2007, this Court filed Plaintiff's Notice of Objection to Magistrate Sumner's August 13, 2007 Order (Doc. No. 44), and a responsive "OBJECTION" pleading (Doc. No. 46) to Magistrate Sumner's August 13, 2007 Order (Doc. No. 41) along with her opposition pleading to the Second Extension of Time granted Defendants Crews and Dial Equities, Inc. (Doc. 45). Plaintiff's pleadings were timely fled.

On or about September 5, 2007, without notice or providing reasons for grounds of recusal, Magistrate Judge Sumner filed "Order of Recusal" (Doc. No. 54). Magistrate Sumner doing so without notifying the Plaintiff that he had done so. Plaintiff had to find out through other source(s). Said recusal coming ***well after*** he had committed acts he knew he was not authorized to perform due to lack of jurisdiction as well as for the reasons underlying his recusal. Nevertheless, rather than recuse himself

upon learning who the parties and their attorney(s) were, he knowingly and deliberately entered rulings clearly contrary to laws, clearly erroneous, etc. and neither he nor this Court has corrected such errors. Moreover, the laws are clear that with said recusal the Order entered by Magistrate Judge Sumner is null/void. As a direct and proximate result of such abuse and unethical practices the Plaintiff has been prejudiced.

On or about September 28, 2007, Judge Lee entered Order of Reference regarding certain motions and/or pleadings filed by the parties in the action to Magistrate Judge (Doc. No. 67).

On or about October 10, 2007, this Court filed Plaintiff's Response to Judge Lee's September 28, 2007 Order. Said responsive pleading was timely submitted.

On September 29, 2007, this Court filed Text Only Order setting hearing before Magistrate Judge for November 13, 2007 (Dated Doc. of 10/29/2007).

On November 5, 2007, Plaintiff filed timely responsive/objection pleading to Text Only Order of September 29, 2007 (Doc. No. 87) notifying the Court that she would not be participating in the November 13, 2007 hearing notifying that she would not be waiving her rights.

On or about November 13, 2007, this Court proceeded with hearing before Magistrate Judge Anderson over the Plaintiff's objections (Dated Doc. Of 11/13/2007)

On or about November 13, 2007 (approximately three months later), Judge Lee entered Order denying Plaintiff's Objections to the Magistrate Sumner's August 13, 2007 Order and **Affirming** (*EMPHASIS ADDED*) null/void August 13, 2007 Order of Magistrate Judge Sumner (Doc. No. 90). **(Fed. Proc. L.Ed. §20.44: Effect of Disqualification** – When a judge perceives grounds for his own recusal, he should recuse himself immediately and not wait for a subsequent stage of the litigation to enter further orders or findings in the case other than housekeeping orders, such as an order assigning the case to another judge. If orders of findings other than housekeeping orders are made, they may be vacated, and a party may seek and obtain a writ of mandamus for this purpose- *Moody v. Simmons,* 858 F.2d 137 (1988) and *Mims v. Shapp,* 541 F.2d 415 (1976)) It is also important to note that when, "*the reporting judge is disqualified*, **his findings are of no effect**, and the trial judge **must** review the record **de novo** and enter findings ***without relying on those made by the disqualified judge***." *Id.* (citing *Government of Virgin Island v. Gereau*, 502 F.2d 914 (1974). As a direct and proximate result of such error, the Plaintiff has been prejudiced and has had to incur additional time, costs and expenses in the filing of additional pleadings to defend against such issues in preparation for Fifth Circuit review.

On or about November 14, 2007, this Court filed Plaintiff's Pleading Notifying said Court that she would not be participating in the November 13, 2007 hearing. Judge and Magistrate were notified via electronic correspondence as well.

On or about November 19, 2007, Plaintiff filed Notice of Motion to Stay and Motion to Stay along with supporting Memorandum Brief in this instant lawsuit. (See Doc. Ns. 94, 95 and 96).

On December 18, 2007, Plaintiff filed Notice of Request for Certification. (Doc. No. 106). Filing being necessary to prepare the record for appeal to the Fifth Circuit.

On or about February 4, 2008, Magistrate Judge Anderson entered Orders (Doc.

Nos. 108 and 109) denying Plaintiff's Motion to Stay (Doc. No. 95) and Plaintiff's Motion to Strike (Doc. No. 104). In which Plaintiff filed timely objections to said Orders and this Court filed on February 20, 2007 (Doc. No. 112).

Therefore, resulting in Plaintiff' filing of notice of disqualification/recusal action. Plaintiff in good faith believes she has filed the required pleadings to preserve the issues raised therein and preserve her rights to assure that she is afforded equal protection of the laws and due process of laws. Moreover, that the decisions of this Court are not "tainted" by personal bias and prejudices through such labeling as "serial" litigator. It is important to note that Plaintiff believes that all pleadings filed in this action by her and/or on her behalf were all filed in good faith and certified in accordance with Rule 11 of the FRCP – unlike Defendant Crews'/Monroe's or other Defendants pleading submitted in this lawsuit, such personal bias and prejudice that is apparent. Defendants in this action repeatedly being allowed to file pleadings in this Court without certification and/or in compliance with Rule 11 of the FRCP.

Plaintiff request this Court exercise its inherent power and discretion and have Defendant Crews' statement(s) and/or material(s) indicated here as well as above stricken and/or statements within Defendant Crews' MFSCH stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in ***bad faith, is legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers")****. . ..*

15. ¶ 9. in its entirety of Crews' MFSCH is to be stricken. Sumner's Order has no being on this instant lawsuit. It was an order entered in 0099. The laws are clear that Magistrate Sumner's **null/void** Order and, therefore, this Court's upholding of such Order could prevent her or her attorney from filing the 00560 lawsuit in this Court. Neither did Defendant Crews/Monroe provide any facts, evidence or legal conclusion to support such assertion. The record in this Court is clear that the two separate lawsuits (00099 and 00560) are independent and *distinct* actions. The filing of this instant lawsuit was not a total disregard to any Order entered by Sumner in this instant lawsuit, because any such Order relied upon by Defendant Crews/Monroe is null/void due to Sumner's recusal and would have no bearing on this lawsuit. Plaintiff would find it hard to believe that based upon her reputation, anyway, that this Court did not examine the claims of this instant lawsuit prior to filing and determine that it had no bearing on the 0099 matter.

The burden of proof that 00099 and 00560 have many of the same claims is on the Defendant Crews. Plaintiff has filed the required pleadings contesting the consolidation of these two cases and set forth the facts, evidence and legal conclusions to support her defense. She has failed to meet this burden. Defendant Crews merely making such "verbal" assertions is legally insufficient and lacks any evidence to sustain it. Moreover, this Court cannot rely upon said assertions.

Abioto was not required to check the docket of the 00099 lawsuit. She is not counsel of record for Newsome in that lawsuit. She is only counsel for Newsome in this lawsuit filed in this Court. Neither has Plaintiff authorized her to represent her in the 00099 lawsuit. Plaintiff has invested the time, conducted the research, drafting and submittal of the pleadings in this instant lawsuit.

Plaintiff request this Court exercise its inherent power and discretion and have Defendant Crews' statement(s) and/or material(s) indicated here as well as above stricken and/or statements within Defendant Crews' MFSCH stricken, in that it is

irrelevant, impertinent and immaterial to this instant lawsuit, was provided in ***bad faith****, is* ***legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers")****. . .*.

16. ¶ 10. in its entirety of Crews' MFSCH is to be stricken. It is not clear what Defendant Crews' defense under Rule 11 of the FRCP is. Rule 11 authorizes Newsome as a "party," to prepare, sign and file pleadings with this Court. See **EXHIBIT "7"** attached hereto and incorporated by reference as if set forth in full herein. Plaintiff is not aware of any unsigned pleadings submitted by her or on her behalf and is neither aware of any such rule/statute/law to support she was not authorized to draft and sign the pleadings filed in this instant lawsuit. Newsome being the one to investigate and conduct research on the matters/issue and having knowledge of the facts, evidence and legal conclusions submitted in this lawsuit by her.

Plaintiff request this Court exercise its inherent power and discretion and have Defendant Crews' statement(s) and/or material(s) indicated here as well as above stricken and/or statements within Defendant Crews' MFSCH stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in ***bad faith****, is* ***legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers")****. . .*.

17. ¶ 11. in its entirety of Crews' MFSCH is to be stricken. Now for the GUSTO. Monroe acknowledge, "The purpose of Rule 11 is to fix responsibility for those matters that are subject to the certificate." Going on to state, "The intent of the attorney's signature is to create an *affirmative duty of* ***investigation*** and deter frivolous actions and meritless maneuvers," citing *Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, 498 U.S. 533, 550 (1991) (See ¶ 11 of MFSCH).

Given such information, the question goes to the fact that Defendant Crews/Monroe acknowledge the ***duty to investigate*** matter. However, Defendant/Crews knowingly, deliberately and willingly provided this Defendants' MFSCH in **bad faith** and for purposes of sham/frivolousness, harassment, delay/hindering of proceedings, obstructing the administration of justice, to increase the costs of litigation, etc.

A reasonable mind given the facts and evidence presented herein, may conclude that the verbal ramblings by Crews/Monroe rather than providing of the citation for *Business Guides,* was done with **bad faith** intent because Defendant Crews/Monroe was aware that the United States Supreme Court in this case, addressed the fact that **"a party"** – whether represented by counsel or unrepresented by counsel – could file pleadings in a lawsuit if they are party to the action. The United States Supreme Court making the following findings in *Business Guides*:

> (**n. 2**) Rule 11 sanctions can be imposed against any attorney ***or*** *party* signing document whether or not signatures on documents are required; certification requirement mandates that all signers consider behavior in terms of duty owed to court system. (**n. 3**) Fact that, under Rule 11, party represented by counsel *is not* required to sign most papers or pleadings does not relieve party who signs document from conducting inquiry into facts and law in order to be satisfied that document is well grounded; represented parties are not free to sign frivolous or vexatious document with impunity. (**n. 4**) ***Represented***

> party who signs his or her name to documents filed in court bears personal, nondelegable responsibility to certify truth and reasonableness of document and failure to meet that duty may subject signer to Rule 11 sanctions. **(n. 5)** Use of word "party" in Rule 11 refers to any signer of document, whether represented or unrepresented or required or not required to sign documents. **(n. 6)** Certification standard for party for purposes of determining whether party is subject to Rule 11 sanctions is one of reasonableness under the circumstances, just as for attorneys; rule states unambiguously that any signer which does not conduct reasonable inquiry will face sanctions. **(n. 7)** Public policy did not require that parties not be held to reasonable inquiry standard for purposes of assessing Rule 11 sanctions; client is often **in better position** *than* attorney **to *investigate* facts** supporting paper or pleading.[2]

A case in which Defendant Crews/Monroe were familiar with and/or should have known provided legal basis to support that Plaintiff may submit pleadings in this lawsuit – in that they cited *Business Guides* in MFSCH. This is a civil rights action.

Plaintiff request this Court exercise its inherent power and discretion and have Defendant Crews' statement(s) and/or material(s) indicated here as well as above stricken and/or statements within Defendant Crews' MFSCH stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in ***bad***

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[2] Federal Rule of Civil Procedure 11 provides, in relevant part, that *"[t]he signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper"* and *"to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact,"* and that a court shall impose an appropriate sanction " upon the person who signed " a pleading, motion, or other paper in violation of the Rule. (Emphasis added.) *Id.* p. 3.

A represented party's signature would *fall outside* the Rule's scope ***only*** *if* the phrase "attorney or **party**" were given the ***unnatural*** reading "attorney or *unrepresented* party." **Had** the Advisory Committee responsible for the Rule *intended to* ***limit*** the certification requirement's application to pro se parties, it would have expressly distinguished between represented and unrepresented parties, *which it did elsewhere in the Rule*, rather than **lumping** *534 the two types together. Including all parties is also an eminently sensible reading of the Rule, since the Rule's essence is that signing denotes merit. *Pavelic & LeFlore v. Marvel Entertainment Group,* 493 U.S. 120, 110 S.Ct. 456, 107 L.Ed.2d 438, which held that the Rule contemplates sanctions against an attorney signer rather than the law firm of which he or she is a member, is entirely consistent with the result here that a represented party who signs his or her name bears a personal, nondelegable responsibility to certify the document's truth and reasonableness. *Id.* p. 4.

The only way that Business Guides can avoid having to satisfy the certification standard is if we read "attorney or party" as used in sentence [5] to mean "attorney or unrepresented party." Only then would the signature of a represented party fall outside the scope of the Rule. We decline to adopt this unnatural reading, as there is no indication that this is what the Advisory Committee**930 intended. Just the opposite is true. Prior to its amendment in 1983, sentence [5] referred solely to "[t]he signature of an attorney" on a "pleading." The 1983 amendments deliberately expanded the coverage of the Rule. Wright & Miller § 1331, at 21. Sentence [5] was amended to refer broadly to "[t]he signature of an attorney or party" on a "pleading, motion, or other paper" (emphasis added). Represented parties, despite having counsel, *545 routinely sign certain papers-declarations, affidavits, and the like-during the course of litigation. Business Guides, for example, submitted to the District Court no fewer than five signed papers in support of its TRO application. The amended language of sentence [5] leaves little room for doubt that the signatures of the "party" on these "other papers" must satisfy the certification requirement. *Id.* p. 9.

Had the Advisory Committee **intended to *limit*** the application of the certification standard to parties proceeding *pro se,* it would surely have said so. . . .Sentence [1] refers to specifically a "a party represented by an attorney," while sentence [2] applies to "[a] party who is *not* represented by an attorney" (emphasis added0. Sentence **[5], however, draws no such distinction; it lumps together the two types of parties. By using the more expansive term "party", the Committee *called for more expansive coverage.*** The natural reading of this language is that *any* party who signs a document, whether or not the party was required to do so, is subject to the certification standard of Rule 11. *Id.* p. 10.

faith, is legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers"). . ..

18. ¶ 12. and Exhibit A in its entirety of Crews' MFSCH is to be stricken. Defendant Crews/Monroe digging and digging a deeper grave for themselves, in which the Plaintiff is more than happy to top with dirt. Stating, "As Vogel Newsome has signed these pleadings she is now fully responsible for their content as well as Abioto absent some action by Ms. Abioto. *Id.* at 551." (WOW!!! At this point and with such a statement, Plaintiff gathers she is supposed to *shaking in her boots*). Again Defendant Crews/Monroe being certain to make only "verbal" assertion because of knowledge such argument is sham/frivolous and has no bearing nor support any Rule 11 defenses asserted against the Plaintiff or Abioto.

Monroe digging even a deeper grave when acknowledging, that "By letter of February 19, 2008, counsel for Crews demanded that Ms. Abioto explain the filings and take some action to *distance* herself." See **EXHIBIT "8"** attached hereto and incorporated by reference as if set forth in full herein. . Monroe's obsession with the Plaintiff need for power and efforts to destroy her life by following her from **job-to-job, attorney-to-attorney,** etc. is clearly unlawful/illegal and unethical. It is obvious that Monroe does not contact the Plaintiff and subject her to such unlawful/illegal attacks as he has done with Plaintiff's counsel in this action, because he knows that Plaintiff will not tolerate such foolishness and will not give into such threats or intimidation. Neither would she allow such unethical practices to go unaddressed. Monroe is merely a "*toothless lion, a lot of roaring, but no bite*." Plaintiff will neither feed into his insecurities to his masculinities that he mask through his legal profession. Acts in which he does not care who he takes as hostage to further and/or fuel his obsession with the Plaintiff.

Yes, he is outraged because being the Big FAILURE he is, he has repeatedly failed in his recent attacks on the Plaintiff regarding employment, attorney, etc. He clearly is one that does not accept defeat well. Especially from one such as Plaintiff Newsome who has been labeled a "serial litigator," is pro se, **non**-*lawyer* and an **African**-*American.* How dare she, who do she think she is, are probably questions he poses to himself. Yes, it is obvious that his obsession is racially motivated as well.

While Defendant Crews' counsel (Monroe) asserts that Abioto, *"did not approve of the filings,"* Plaintiff was not aware of this and simply was determined to see that her rights were protected. Given the fact that Plaintiff's attorney advised her client of being ill and unreturned messages, Plaintiff knew that she would have to file pleadings to preserve her right. Given the information that is surfacing from the willful donations of Monroe, Plaintiff believes a reasonable mind may conclude that there has been a great deal of corresponding between Monroe and other Defendants' counsel in this lawsuit and 00099 with Abioto, although Abioto does not represent Newsome in 00099. Monroe going on to state, *"so far, she has not done nothing"* (referring to Abioto). No while they were *skinning and grinning like wide-eyed Cheshire cats* with each other behind the scenes, Plaintiff was tugging away staying abreast of the deadlines and filing the applicable pleadings to protect her rights. They knew that Plaintiff would not go for such foolishness and could see beyond and through their *hoods.* Outrage, yes. Monroe being so because perhaps of such fallen/collapsed plans and "alleged" agreements he thought he had reached and had succeeded in achieving through such "alleged" agreement with Abioto. Outrage, yes. Because Monroe has not obtained the withdrawal and the dismissal of this lawsuit in regards to such "alleged"

agreement (of withdrawal) between Plaintiff's counsel and him in which the Plaintiff was not aware that he and her counsel were working on behind her back. It is a good thing that Plaintiff remained focused and continued to tug away and file the applicable pleadings in this instant lawsuit. **So if Crews/Monroe or others were relying upon such "alleged" agreement with Abioto – touché.** Abioto was hired and retained by Plaintiff. Her duty and interests are to be that of her client in this instant lawsuit. **Moreover, if they are aware of any such "alleged" agreement, they should present *any such evidence* to this Court.**

Plaintiff request this Court exercise its inherent power and discretion and have Defendant Crews' statement(s) and/or material(s) indicated here as well as above stricken and/or statements within Defendant Crews' MFSCH stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in ***bad faith, is legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers")****. . .e.*

19. ¶ 13. and its supporting "Exhibit "B" in its entirety of Crews' MFSCH is to be stricken. Monroe admits again, two days later (on February 21, 2008), contacting Plaintiff's counsel "*concerning her proposed intent to withdraw and made clear he would not agree to a voluntary withdrawal by her as counsel for Ms. Newsome because she knew when she undertook the representation Ms. Newsome's nature and the likely course she would take in the litigation.*" From the Plaintiff's understanding, it was Monroe who communicated that he wanted a dismissal this action; however, before agreeing to any such withdrawal, he demanded that Abioto dismiss this action. See **EXHIBIT "9"** attached hereto and incorporated by reference as if set forth in full herein. The question here then would be, if they believed they had a strong defense of *res judicata*, and that Plaintiff's Rule 41 "Voluntary" Dismissal in the Hinds County Court action was not a good defense move to protect her interest, then why would he be requesting that Abioto agree to dismiss this action. Moreover, the badgering, harassment, etc. of Plaintiff's attorney is clearly unethical and in violation of the Code governing attorney conduct.

20. ¶ 14. in its entirety of Crews' MFSCH is to be stricken. Defendant Crews/Monroe makes a **bad faith** and sham/frivolous demand that they know is not required under 28 USCA Rule 11 of the FRCP and request, "*Ms. Abioto should either place her signature on these pleadings and take responsibility* for the scandalous accusations and reckless assertions made against U.S. Magistrate Judge Anderson, U.S. District Judge Lee, the judicial process generally and the parties and counsel or she should cause them to be retracted without further delay." 28 U.S.C. § 455 actions were enacted for a reason. The lawmakers knew what they were doing. So any such theatrics performed by Monroe should be saved for the circus, where he can perform with other clowns, because the Plaintiff is not amused nor entertained by such scandalous and frivolous accusations leveled against her.

Plaintiff is the one that filed the pleadings at question in both this instant lawsuit and that and 00099 and is responsible for their contents. Contents provided in good faith based upon investigation, research, etc. to the pleadings she has filed and/or intend to file as NOTICED. Neither will the Plaintiff be deterred from filing the Disqualification/Recusal pleadings simply because of Defendant Crews' MFSCH pleading. Crews' pleading is legally insufficient, provides no facts or evidence to sustain it or to rebut that presented by the Plaintiff. Plaintiff believes that the pleadings she filed in this instant lawsuit were all submitted in good faith, they were certified in

accordance with Rule 11 – unlike Defendant Crews and other Defendants pleadings in this lawsuit. Something is definitely wrong with the picture.

Plaintiff request this Court exercise its inherent power and discretion and have Defendant Crews' statement(s) and/or material(s) indicated here as well as above stricken and/or statements within Defendant Crews' MFSCH stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in ***bad faith, is legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers")****. . ..*

21. ¶ 15. in its entirety of Crews' MFSCH is to be stricken. Plaintiff does not believe a hearing is necessary on Defendant Crews' MFSCH. Said Defendant's MFSCH has been provided in **bad faith**, with sham/frivolous intent. In regards to subparagraph(s): **"a)"** – Abioto is not required, as a matter of law to certify to this Court that she has read and approved the pleadings filed by Plaintiff Newsome. Nor is Abioto, in that Plaintiff is **"a party"** to the action and pursuant to 28 USCA Rule 11 of the FRCP, and, therefore, authorized under said Rule to draft, sign and file pleadings in said action. There is no valid and/or binding order in this Court that precluded the Plaintiff from filing the Complaint in this lawsuit. **"b)"** – Plaintiff is not required to appear and provide any clear evidence to this Court at the request and *whelm* of Defendant Crews' counsel's (Monroe's) request – to satisfy his *fetish* and need to see and/or look upon the Plaintiff. Such fetish/obsession which is unhealthy, illegal and unlawful. Monroe is merely a *predator* who thrives on stalking the Plaintiff from job-to-job and attorney-to-attorney and is now underhandedly attempting to mask such obsessions with the Plaintiff by requesting "unnecessary and unwarranted hearings before this Court." For this Court to feed into Monroe's obsessions and hold a hearing on pleading he filed on behalf of Defendant Crews is absurd and would be a great injustice to both the Plaintiff and Abioto in that it would require them to have to incur additional and needless expenses already exhausted to defend against the defenses he uses to mask and/or fuel his obsession with the Plaintiff. No, if required, as NOTICED, Plaintiff will move forward within the time provided and file the required Disqualification/Recusal pleadings "c)" – Plaintiff is not required to waive her objections to have matter tried before Magistrate Judge. Said objections raised by the Plaintiff is permissible as a matter of law/statute and can substantiate the Plaintiff's defense. Congress and/or the lawmakers knew what they were when they enacted the Magistrate Act. Magistrate Judge Anderson is not an "Article III" Judge and there is no waiver filed in this Court by the Plaintiff agreeing to proceedings before her or any other Magistrate Judge. The screening Defendant Crews/Monroe is required is clearly unwarranted and there is no evidence or legal basis upon which such demands can rest. *If they do not have good sense or judgment to look both ways before stepping out, then they are going to be slammed with pleadings and sanctions. Moreover, the required lawsuit for their illegal wrongdoings. Monroe is one supposedly schooled in the laws. He stepped out in filing the MFSCH pleading and therefore, subjected he and his clients to sanctions in this action.* Any disqualification/recusal action the Plaintiff intends to file will be provided through the appropriate judicial process and such coercion by Defendant Crews/Monroe is not to be entertained. They can review any such pleadings, evidence and legal conclusions presented should such action be necessary. **"d)"** - It is important to note that citation provided by Defendant Crews/Monroe in *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985) has no bearing on this instant lawsuit or the claims Plaintiff has filed. Moreover, is an action that addresses **in forma pauperis** matters. Plaintiff is not proceeding in this instant lawsuit

IFP and is represented by counsel. Clearly showing such bad faith and sham/frivolous efforts by Defendant Crews/Monroe to get this Court to error and/or violate the laws. Plaintiff is a paying litigant. Plaintiff has demanded a JURY TRIAL in both actions and therefore, this Court cannot deprive her of this Constitutional guarantee. Neither will Plaintiff waive any such prohibited rights to a JURY TRIAL and have her issue(s) tried before this Court. Plaintiff believes and the evidence and legal conclusions provided in this instant lawsuit, supports that there is an appearance of personal bias and prejudice towards; moreover, appearance of impropriety. **"e)"** – It is not clear to the Plaintiff why such statement and/or assertion is made by Defendant Crews regarding the formatting of the Plaintiff's pleadings. Plaintiff's paragraphs meet the pleading requirements and any subparagraphs (itemizing/listing – being numbered/ lettered) are indented and *singled* space – this being Plaintiff's preference and one used many times and not objected by the courts. Remember Defendant Crews/Monroe have labeled Plaintiff a "serial litigator" one would think that she is submitting her pleadings in compliance with the laws. Moreover, the Local Rules of this Court allows pleadings to be 35-pages. See **EXHBIT "16"** attached hereto and incorporated by reference.

> (E) Length of Memoranda. Movant's original and rebuttal memoranda together shall not exceed a total of thirty-five pages, and respondent's memorandum shall not exceed thirty-five pages.

Surely, Defendant Crews/Monroe was aware of this. If Defendant Crews/Monroe are aware of any such violations, then such should be made known. However, simply attacking format of Plaintiff's pleadings is clear evidence of bad faith, pettiness, sham and frivolous. Second **"e)"** (sic) – Defendant Crews/Monroe have both failed to provide facts, evidence or legal conclusion to support why Plaintiff in this instant lawsuit would have to appear before this Court. This Defendant and her counsel have failed to present any Rule 11 violations or that any of the pleadings filed by the Plaintiff violated any statutes/laws and/or were prohibited from being filed. Therefore, any facts, evidence or legal conclusions to sanction Plaintiff or Abioto is lacking to sustain Defendant Crews' MFSCH. Neither does this Court at the *whelm* of Defendant Crews/ Monroe need to sanction and/or consider whether "Ms. Abioto's conduct (or lack of action to correct her client's conduct) to date warrants referral to the Mississippi Bar for further investigation." However, the facts, evidence and legal conclusions provide in this instant pleading and Plaintiff's previous pleadings as it relates to the filings by Defendant Crews (such as her MFSCH) and Monroe's submitting such on her behalf, **clearly warrants that it is their acts, behavior and unethical practices that clearly warrants sanctions and he referred to the Mississippi Bar. Moreover, suspension and/or disbarment from the legal provision to protect other citizens from such judicial abuses by him – (i.e. such acts as following citizens from job-to-job, attorney-to-attorney, etc. and committing civil and criminal wrongs through said actions. Acts which are willful, malicious and wanton).**

Plaintiff request this Court exercise its inherent power and discretion and have Defendant Crews' statement(s) and/or material(s) indicated here as well as above stricken and/or statements within Defendant Crews' MFSCH stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in ***bad faith, is legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers")***. . . .

22. Closing Paragraph, and the relief sought therein, in its entirety of Crews'

MFSCH is to be stricken. Said relief is not permissible. Neither has Defendant Crews/Monroe provided any facts, evidence to legal conclusions to support such.

Plaintiff request this Court exercise its inherent power and discretion and have Defendant Crews' statement(s) and/or material(s) indicated here as well as above stricken and/or statements within Defendant Crews' MFSCH stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in ***bad faith, is legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers")***. . .

I. "SERIAL LITIGATOR" ISSUE/ASSERTION BY DEFENDANT CREWS:

Defendant Crews in the very first paragraph begins "Vogel Newsome is a serial litigator." Using the **snapshot rule**, this Court will find that such scandalous and frivolous labeling of the Plaintiff cannot be sustained. Moreover, Plaintiff believes a reasonable mind may conclude that said labeling of the Plaintiff has been made in bad faith in efforts of distorting the facts of this lawsuit. It was presented with scandalous intent for purposes of prejudicing this Court against the Plaintiff. One may conclude from such a statement that Plaintiff makes a living and/or spends 99% and/or a great deal of her time on a day-to-day basis filing separate lawsuits because she has nothing better to do. Furthermore, Plaintiff's claims of Defendant Crews' counsel's abuse on the Court and harassment of the Judges is evidenced in his letter dated February 25, 2008, which states:

> "My clients must have relief as these cases are entirely out of control. . . . While I normally would not bring a motion directly to the Court's attention, in this case I believe it is necessary as I wanted to request that the Court look into these matters, order an **in person hearing** and assist in getting these two cases that are costing my client thousands of dollars under control. While I respectfully acknowledge the Court's docket is likely burdensome it is equally burdensome to my client to continue this tit-for-tat that this serial litigator is requiring by her voluminous filings in a frivolous law suit.
>
> More disturbing is the innuendo and outright accusations by Ms. Newsome in both cases that each of you have committed all sorts of malfeasance in this matter. My client is now forced to deal with a pro se litigant in 3:07-cv-00099 while the same "pro se" party is represented by an attorney in 3:07-cv-00560 so that she is getting the "best of both worlds." . . . Ms. Newsome is sufficiently versed in the court system that she must be held accountable and can not be allowed to continue unchecked while she inflicts her brand of retribution for a matter *that began with a leaky roof.*
>
> Please review the attached and we would request a hearing as soon as reasonably possible with all counsel and Ms. Newsome personally present to answer to this court. . . "

See **EXHIBIT "6"** attached hereto and incorporated by reference.

Plaintiff is indeed truly grateful, because with time, Clark Monroe continues to provide her with the evidence necessary to support the lawsuit she will be filing against him as one of the Defendants in a future lawsuit – legal action. As he has done here, Monroe

has taken it upon himself to follow the Plaintiff from job-to-job, attorney-to-attorney, etc. notifying them of past lawsuits she has filed. While the Plaintiff has in good faith attempted to move on with her life, you of course have the Monroe's who insist on destroying it. Monroe using the same tactics used on Carl Brandon (regarding the Port Gibson, Mississippi shootings); wherein, it was said that Mr. Brandon was being harassed, being followed from job-to-job, etc. Finally, he could not take it anymore, and, as a direct and proximate result a needless and senseless tragedy occurred.

Monroe in requesting an **in person hearing** is merely attempting to get this Court to aid him with his fetish/obsession with the Plaintiff. He is disappointed because the Plaintiff has moved away. While a reasonable mind may conclude he has not tried to contact her employer, the thing is, her new employer makes it clearly known in their employment policies, that they will not "discriminate" because a person has filed lawsuits, engaged and/or participated. **It is the law.** Nevertheless, Monroe has taken it upon himself with the support of others to follow the Plaintiff from job-to-job and attorney-to-attorney, etc. and advising them of the past lawsuits filed by the Plaintiff. Such acts which are clearly in violation of the laws and in violation of the Code of Professional Conduct and/or governing Codes for attorney conduct/practices. **Plaintiff believes that there is sufficient evidence and/or an investigation into the civil and criminal wrongs of Clark Monroe would warrant sanctions of "suspension," "disbarment," "contempt," etc.** Whichever sanction(s) are appropriate to correct the wrongs and injustices he has knowingly, willingly, deliberately and maliciously committed through his legal profession against Plaintiff Newsome. In further support of her defense to Defendant Crews' attorney, Clark Monroe's, letter to this Court and the MFSCH filed in this action, the Plaitniff further states:

> The fling of charges is protected even if the charge contains collateral statements which are false and apparently malicious, and this includes charges filed against a previous employer.
>
> Fn 11 - EEOC Decision No. 71-460, 1973 EEOC Decisions ¶ 6175 (employer violated § 2000e-(3)(a) by discharging an employee **after learning** *he had filed charges of discrimination against a former employe*r). . . .*Barela v. United Nuclear Corp.* (DC NM) 317 F.Supp 1217, affd (CA 10 NM) 462 F.2d 149 (injunctive relief granted against prospective employer's refusal to further process plaintiff's job application after learning that plaintiff had filed complaint against a former employer).

See **EXHIBIT "10"** attached hereto and incorporated by reference as if set forth in full herein.

> EEOC Decision No. 71-460, 1973 EEOC Decisions ¶ 6175. . . Respondent's officials who participated in the decision to discharge Charging Party stated in an affidavit that he had contacted an employer against whom Charging Party had made a previous Commission Charge. He states that the employer recommended that "we take action now for our own protection." . . . .The file reflected he had filed a Civil Rights charge with EEOC. . . .There is no evidence in the record indicating that Respondent would have discharged Charging Party had it not been aware of Charging Party's earlier charge. Such an action

> based, at least in part, upon Charging Party's participation in Commission proceedings violates Section 704(a) of Title VII. Id. p. 4297.

See **EXHIBIT "11"** attached hereto and incorporated by reference as if set forth in full herein.

23. As expressed above, Plaintiff Newsome believes that the **Fifth Circuit** Court of appeals would be highly *displeased* and/or *disappointed* to know that Defendant Crews her counsel (Monroe) other Defendants and their counsel and this instant lawsuit have taken its decisions to knowingly, deliberately, willfully and maliciously carry out "civil" and "criminal" wrongs against Plaintiff because they have found out about the four (4) lawsuits she has filed and/or participated in over the past **20** years. In fact, it is the Fifth Circuit who has advised the Plaintiff that she has other remedies available to her – for instance, stating, *". . . plaintiff is instructed to seek any further relief to which she feels entitled in the Fifth Circuit Court of Appeals, as may be appropriate in due course*" (2002 WL 1303123), and "Newsome also is not entitled to the writ because she has another adequate remedy available, i.e. ***she could file suit in court against her employer. . .***" (37 Fed.Appx. 87). Furthermore, Plaintiff believes from the evidence in the record of this Court, that not only the Fifth Circuit, *but a reasonable mind may conclude that such action as Defendant Crews' MFSCH are desperate to get this Court to unlawfully and unconstitutionally prevent Plaintiff from bringing lawsuits because they are aware that based on the facts, evidence and legal conclusions they played a major part in the getting the Plaintiff terminated from her employment with Page Kruger & Holland. Page Kroger & Holland who attorney(s) are representing: (a) Hinds County, Mississippi; (b) Malcolm McMillan; (c) Jon Lewis; and (d) William Skinner.*

While one knows that the evidence Plaintiff has acquired to support her unlawful/illegal and unethical practices of Defendant Crews her counsel and other Defendants and their counsel is hard to come by, she has benefited from same to not only support the pending lawsuits filed in this Court, but those in which she will be filing against her former employer(s) – being given authorization by the Fifth Circuit to do so. Defendant Crews and her counsel as well as other Defendants now with the aid to Plaintiff's former employer (Page Kruger & Holland) have taken it upon themselves to contact employer(s) of Plaintiff to notify them of lawsuits filed by her. In fact, in defendants' counsel in Hinds County Court action took it upon themselves to contact Plaintiff's employer (Page Kruger & Holland) to notify of the lawsuit she had filed in the Hinds County Court. As a direct and proximate result of such notification and acts, the Plaintiff's employment with Page Kruger & Holland was terminated. It is important to note that Plaintiff's termination may have also been contributed to the fact that Page Kruger & Holland knew that based upon the facts evidence presented in this instant lawsuit, that it was inevitable that Plaintiff would be suing Hinds County, Malcolm McMillin, William Skinner, Jon Lewis and others based upon the civil and criminal wrongs rendered her. The laws are clear that such violations are prohibited by law. Just as these Defendants in this lawsuit have made their knowledge known to this Court of past lawsuits filed by the Plaintiff, they have done so with her employer(s). The laws are clear on such matter that such acts are clearly prohibited by law:

> **Employer violated ~2000e-3(a)** by discharging an employee after learning he had filed charges of discrimination against former

employer. *EEOC Decision No.* 71-460, 1973, EEOC Decisions ¶ 6715.

Nevertheless, on about May 15, 2006, Plaintiff was terminated from her place of employment with Page Kruger & Holland as a direct and proximate result of being notified of the lawsuit she had filed in the Hinds County Court as well as its knowledge of lawsuits filed against former employers. See **EXHIBIT "12"** attached hereto and incorporated by reference as if set forth in full herein. A nexus and/or causal link can be established between Plaintiff's participation in the protected activity and her termination. Plaintiff was terminated on about May 15, 2006 and the hearing on was set in the Hinds County Court on May 18, 2006. See **EXHIBIT "13"** attached hereto and incorporated by reference as if set forth in full herein. Acts were willful, malicious and wanton and deliberately done to cause the Plaintiff injury/harm. Moreover, in an effort to add salt to the unlawful/illegal acts of the Plaintiff, defendants' counsel in the Hinds County Court action badgered, pressed, harassed, etc. Plaintiff's first attorney in that action into withdrawal – providing him with information regarding past lawsuits filed by her. Using the same tactics that are trying to use Plaintiff counsel in Civil Action No. 3:07-cv-00560 filed in this Court.

24. In fact, the United States Supreme Court provides an example of a pro se ***in forma pauperis*** litigant who filed *numerous* complaints; however, said Court did not close the door to his filing in the future:

> *In re McDonald,* 489 U.S. 180, 109 S.Ct. 993 (1989)[3] - Jessie McDonald may well have abused his right to file petitions in this Court without payment of the docketing fee; the Court's order documents that fact. I do not agree, however, that he poses such a threat to the orderly administration of justice that we should embark on the unprecedented and dangerous course the Court charts today. . . . I am most concerned, however, that if, as I fear, we continue on the course we chart today, we will end by closing our doors to a litigant with a meritorious claim. *It is rare, but it does happen on occasion* that we grant review and even ***decide in favor of a litigant*** **who previously had presented *multiple unsuccessful****188 *petitions on the same issue*. See, e.g., *Chessman v. Teets,* 354 U.S. 156, 77 S.Ct. 1127, 1 L.Ed.2d 1253 (1957); see id., at 173-177, 77 S.Ct. at 1136-1138 (Douglas, J., dissenting).[4]
>
> "Petitioner is no stranger to us. Since 1971, he has made **73** *separate* filings with the Court, not including this petition, which is his eighth so far this Term. These include **4** appeals, **33** petitions for certiorari, **99** petitions for extraordinary writs, 7 applications for stay and other injunctive relief, and **10** petitions for rehearing." Id. pp. 994-995.
>
> "But **paupers** filing *pro se* petitions are not *subject to the **financial** considerations* - filing fees and attorney's fees -

[3] See **EXHIBIT "14"** attached hereto and incorporated by reference as if set forth in full herein.
[4] See **EXHIBIT "15"** attached hereto and incorporated by reference as if set forth in full herein.

that **deter** other litigants from filing frivolous petitions." Id. p. 996.

The Supreme Court (even after all of McDonald's) did **not** close the door to McDonald. A litigant who is identified as filing 73 separate filings in a one-year period; however, ruled, "Petitioner remains free under the present order to file in forma pauperis requests for relief other than an extraordinary writ, if he qualifies under the Court's Rule 46 and does not similarly abuse that privilege." Id. p. 996.

In this instant lawsuit Plaintiff is labeled a "serial litigator" for filing approximately four (4) lawsuits over an approximate **20**-year period and now she is now in litigation with the two lawsuits before this Court.

25. The Supreme Court finding in, *Lakes v. State,* 333 S.C. 382, 510 S.E.2d 228 (1998) that:

According to the State, Lakes has submitted one direct appeal, three PCR applications, two petitions for writ of certiorari, a federal petition for writ of habeas corpus, petitions for writs of mandamus, attorney grievances, and proposed orders for release. Although Lakes's requests for relief are numerous, the trial judge failed to make factual findings to show the requests rise to the level of repetitive and abusive filings as in Maxton or those cases cited in Maxton. [FN2] Therefore, **231 we reverse the order of the trial judge and remand the case for further proceedings consistent with this opinion. In so doing, we make no comment as to the merit of Lakes's claims. Lakes still bears the burden of proving why his application should not be dismissed as successive pursuant to *387 S.C.Code Ann. § 17-27-90 (1976). See Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

FN2. The United States Supreme Court denies litigants who have repeatedly filed frivolous petitions the right to proceed in forma pauperis. However, the Court has done so pursuant to its Rule 39.8. See, e.g., In re Whitaker, 513 U.S. 1, 115 S.Ct. 2, 130 L.Ed.2d 1 (1994) (petitioner filed **23** claims for relief that had all been denied without dissent); In re Anderson, 511 U.S. 364, 114 S.Ct. 1606, 128 L.Ed.2d 332 (1994) (petitioner submitted **22** separate petitions and motions in a three year time span); *In re Demos,* 500 U.S. 16, 111 S.Ct. 1569, 114 L.Ed.2d 20 (1991) (petitioner made **32** in forma pauperis filings with the Supreme Court, most of which challenged sanctions imposed by the lower court); *In re Sindram,* 498 U.S. 177, 111 S.Ct. 596, 112 L.Ed.2d 599 (1991) (petitioner filed **42** separate petitions and motions in three year time span, all of which were denied without dissent); In re McDonald, 489 U.S. 180, 109 S.Ct. 993, 103 L.Ed.2d 158 (1989) (petitioner made **71** separate filings, all of which were denied without dissent). Rule 39.8 states:

> If satisfied that a petition for writ of certiorari, jurisdictional statement, or petition for an extraordinary writ, as the case may be, is frivolous or malicious, the Court may deny a motion for leave to proceed in forma pauperis.

(Information cut & pasted from WesLaw search)

26. The Supreme Court finding in *In re Maxton,* 325 S.C. 3, 478 S.E.2d 679 (S.C.,1996) that:

> Petitioner, an inmate, has submitted **sixty-four** pro se petitions *over the past three* years, including **forty-six** so far this year, asking this Court to hear matters in its original jurisdiction or issue various extraordinary writs. Each petition submitted by petitioner has been frivolous and dismissed pursuant to *Key v. Currie,* 305 S.C. 115, 406 S.E.2d 356 (1991), because no extraordinary reason existed to entertain the matter in the original jurisdiction of this Court.
>
> . . . The courts in other jurisdictions have responded in a variety of ways to abusive filings such as those by petitioner. The United States Supreme Court has denied litigants who have filed repetitive, frivolous petitions the right to proceed in forma pauperis, resulting in the litigants having to pay the required filing fee with that Court. *In re Whitaker,* 513 U.S. 1, 115 S.Ct. 2, 130 L.Ed.2d 1 (1994); In re Anderson, 511 U.S. 364, 114 S.Ct. 1606, 128 L.Ed.2d 332 (1994); In re Demos, 500 U.S. 16, 111 S.Ct. 1569, 114 L.Ed.2d 20 (1991); *In re Sindram,* 498 U.S. 177, 111 S.Ct. 596, 112 L.Ed.2d 599 (1991); **In re McDonald,** 489 U.S. 180, 109 S.Ct. 993, 103 L.Ed.2d 158 (1989). Other courts have required that the abusive litigant file an affidavit certifying that he believes the petition raises an original claim or is nonfrivolous before accepting filings from the litigant. *In the Matter of Verdone,* 73 F.3d 669 (7th Cir.1995); *Abdul-Akbar v. Watson,* 901 F.2d 329 (3d Cir.1990); *Green v. Warden,* 699 F.2d 364 (7th Cir.), cert. denied, 461 U.S. 960, 103 S.Ct. 2436, 77 L.Ed.2d 1321 (1983).

(Information cut & pasted from WesLaw search) **Clearly supporting that the "serial litigator" labeling of the Plaintiff has run its course and can be put to rest.**

Plaintiff request this Court exercise its inherent power and discretion and have Defendant Crews' statement(s) and/or material(s) indicated here as well as above stricken and/or statements within Defendant Crews' MFSCH stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in bad faith, is legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers"). . .

II. DISQUALIFICATION/RECUSAL ISSUE:

The Plaintiff believes that the notices filed in this Court in Civil Action Nos. 3:07-cv-00099 and 3:07-cv-00560 requesting Disqualification/Recusal were submitted in good faith, for the preservation of issue(s) and in the interest of justice. Congress and/or the lawmakers made provisions for bringing such actions. In further support the Plaintiff states:

> 27. Plaintiff believes there is sufficient facts, evidence and legal conclusions (past decisions of this Court and other courts) provided the lawsuits filed (3:07-cv-00099) and this instant action to support this Court discriminative application of the laws when dealing with the cases filed by her – said ruling clearly contrary and/or going against past decisions of this Court or other courts on the same issue(s). Moreover, that personal bias and prejudice towards the Plaintiff is obvious and the appearance of impropriety blatant.
>
> *Phillips v. Joint Legislative Committee on Performance and Expenditure Review of State of Miss.*, 637 F.2d 1014 (5th Cir. Miss. 1981) - **(n. 4)** The alleged bias of a judge must be personal as distinguished from judicial in nature in order to require recusal. 28 U.S.C.A. §§ 144, 455. **(n. 2)** - Affidavit of recusal is legally sufficient if the facts are material and stated with particularity, the facts are such that they would convince a reasonable person that bias exists if they are true, and the facts show that the bias is personal as opposed to judicial in nature. 28 U.S.C.A. §§ 144, 455. **(n. 3)** Under statute requiring a judge to disqualify himself in any proceeding in which his impartiality might be reasonably questioned, judge need not accept all the allegations by moving party as true and, in fact, no motion at all is required; the judge must disqualify himself if the facts cast doubt on his impartiality regardless of how or by whom they are drawn to his attention. 28 U.S.C.A. § 455.
>
> *Laxalt v. McClatchy*, 602 F.Supp. 214 (1985) - **(n. 1)** Appearance of partiality is sufficient to require disqualification of magistrate. **(n. 2)** Ruling by magistrate on nondispositive pretrial matter should be set aside by district court on review only if found to be clearly erroneous in fact or contrary to law. 28 U.S.C.A. § 636(b)(1)(A); **(n. 3)** On motion to disqualify magistrate, standard is whether reasonable person with knowledge of all facts would conclude that magistrate's impartiality might reasonably be questioned. **(n. 6)** Reviewing court will find abuse of discretion only when there is definite and firm conviction that court below committed clear error of judgment in conclusion it reached upon weighing of relevant factors. **(n. 7)** Appearance of impartiality is material issue on motion for disqualification of magistrate, not ability to prove or disprove absence of actual prejudice; test is objective and inquires whether reasonable person with knowledge of all facts would conclude that judge's impartiality might reasonably be questioned. **(n. 8)** Disqualification of magistrate must rest upon factual basis; subjective belief of moving litigants is not determinative. **(n. 12)** Judge should resolve any close issue in favor of disqualification if reasonable person might question his impartiality.

28. Just as Magistrate Sumner knew that there was a conflict, he deliberately failed to recuse himself. He compromised the integrity of this Court and rather than uphold the laws, he elected to take a far departure and enter ruling(s) as special favor to the Defendants in Civil Action No. 3:07-cv-00099. Then without notice, he simply

recused himself without stating the reasons for said recusal for the record. Moreover, Judge Lee affirmed Sumner's Order in said action, which he clearly knew and/or should have known was clearly in violation of Plaintiff's Constitutional rights and/or the statutes/laws governing recusals. Plaintiff believes the integrity of this Court has been heavily breached and has, therefore, noticed the filing of the applicable pleadings in an effort to obtain justice and to clean up the docket in this action by getting rid of the clutter the Defendants bring through their bad faith and/or sham/frivolous pleadings. *Hall v. Small Business Admin.,* 695 F.2d 175 (C.A.5.Miss.,1983) - Every justice, judge and magistrate is required to disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

29. Plaintiff believes that the rulings submitted so far in this lawsuit by Magistrate Anderson will support that she clearly violated the laws/statutes governing said matters and that her acts were deliberately done to deprive the Plaintiff equal protection of the laws and due process of laws. Acts upon which a reasonable mind may conclude her rulings will be influenced by deep-seated favoritism or antagonism based on the unlawful/illegal and unethical practices Defendant Crews and her counsel have been allowed render under her watch. *Liteky v. U.S.,* 114 S.Ct. 1147 (1994) - Opinions formed by judge on basis of facts introduced or events occurring in course of current proceeding, or prior proceedings, do not constitute basis for bias or partiality disqualification motion unless they display deep-seated favoritism or antagonism that would make fair judgment impossible. 28 U.S.C.A. § 455(a).

30. Plaintiff is simply requesting that the Judge Lee and Magistrate examine the record and their actions, based on the record, and recuse/disqualify themselves if warranted without the Plaintiff having to incur additional costs and expenses and file the required Disqualification/Recusal pleading. Plaintiff has a right to have a Judge preside over this instant lawsuit that can be impartial, fair and just. Keeping the blindfold in place and deciding the claims and issues raised based on the laws, and not a Judge influenced by special friendships and the need to render special favors to the Defendants and their counsel because of relationship(s) established. *Rutland v. Pridgen,* 493 So.2d 952 (Miss.,1986) - Judge is required to disqualify himself if reasonable person, knowing all the circumstances, would harbor doubts about his impartiality. *Jones v. State,* 841 So.2d 115 (Miss.,2003) - A judge is required to disqualify himself if a reasonable person, knowing all the circumstances, would harbor doubts about his impartiality.

31. Plaintiff believes that the record evidence in this action will support that she in good faith has been patient, enduring and in no way has disrespected this Court. However, she will not allow Defendant Crews' counsel to come before this Court and continue to slander and scandalize her name and reputation without rebuttal. Such practices by Clark Monroe are clearly unlawful/illegal and unethical. The question being raised, is why does it appear that he felt so comfortable in bringing his bogus/scandalous/ slanderous, etc. letter of February 25, 2008 before this Court. As Plaintiff could see right through him and the shallow and frivolous pleadings, it is not clear why this Court has repeatedly allowed this counsel and other Defendants and their counsel to practice before this Court in such a manner. It is obvious they have been allowed to proceed because of the mentioning of previous lawsuits filed by the Plaintiff in **clearly unrelated matters** having no bearing on the lawsuits filed in this Court. Moreover, have used such knowledge of past lawsuits to commit civil and criminal

wrongs against the Plaintiff. *Travelers Ins. Co. v. Liljeberg Enterprises, Inc.,* 38 F.3d 1404 (5th Cir. 1994) - One seeking disqualification must do so at the earliest moment after knowledge of the facts demonstrating the basis for disqualification. 28 U.S.C.A. § 455(a).

32. Plaintiff believes her timely filing notifying of her intent to bring Disqualification/Recusal action is sufficient. Moreover, warranted to present this issue for appeal purposes. *Hollywood Fantasy Corporation v. Gabor,* 151 F.3d 203 (5th Cir. 1998) - Although a disqualification challenge raised for the first time on appeal is not per se untimely, the timeliness requirement of recusal statute obligates a party to raise disqualification issue at a reasonable time in the litigation. 28 U.S.C.A. § 455.

Plaintiff request this Court exercise its inherent power and discretion and have Defendant Crews' statement(s) and/or material(s) indicated here as well as above stricken and/or statements within Defendant Crews' MFSCH stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in ***bad faith, is legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers").***. . .

II. CONSPIRACY ISSUE:

The record evidence, facts and legal conclusions on this issue speaks for itself. Moreover the most recent and damaging information willfully surrendered by Defendant's counsel, Clark Monroe, in an effort of inducing this Court to engage in said conspiracy. In support thereof, the Plaintiff states:

33. Plaintiff believes that a reasonable mind may conclude that the Complaint filed in this lawsuit, her subsequent pleadings as well as Defendant Crews' counsel's, Monroe, recent correspondence will sustain that she has met the prima facie prerequisites to sustain her conspiracy allegation raised in this instant lawsuit as well as when she file the applicable actions of and against this Defendant her counsel, his law firm and other conspirators/co-conspirators who played an active role in the conspiracy resulting in her termination of employment with Page Kruger & Holland – Page Kruger & Holland to be a Defendant in that lawsuit as well. Plaintiff is very thankful through this lawsuit and Civil Action No. 3:07-cv-00099, Defendants provided her with additional information and evidence to support the lawsuit to be filed against them at a later date. *Wells v. Shelter General Ins. Co.,* 217 F.Supp.2d 744 (S.D.Miss.Jackson.Div.,2002) **(BARBOUR)** - Under Mississippi law, in order to succeed on a claim of civil conspiracy, a plaintiff must show (1) the existence of a conspiracy, (2) an overt act in furtherance of that conspiracy, and (3) damages arising therefrom.

34. Plaintiff believes not only the evidence presented in this instant lawsuit supports and/or sustain the conspiracy launched against the Plaintiff, but Monroe will take it as far as trying to get this Court to engage in same. See his letter of February 25, 2008 to the Judges/Magistrate. Now that the Plaintiff has brought this instant lawsuit, he is attempting to get it dismissed. Such a dismissal which, as a matter of law, is not warranted. *Cooper Tire & Rubber Co. v. Farese,* 423 F.3d 446 (5th Cir. Miss. 2005) - Under Mississippi law, "civil conspiracy" requires showing: (1) two or more persons or

corporations; ?(2) an object to be accomplished; ?(3) a meeting of the minds on the object or course of action; ?(4) one or more unlawful overt acts; ?and (5) damages as the proximate result.

35. As with the letter Defendant Crews presented to this Court on her and/or his clients' behalf, a reasonable mind may conclude that he is now attempting to engage this Court to aid him in furtherance of said conspiracy that has been hatched against the Plaintiff. The record evidence in this lawsuit clearly supports (as his February 25, 2008 letter to this Court) that he has followed the Plaintiff from **job-to-job, attorney-to-attorney,** etc. notifying them of lawsuits in the past for purposes of causing her further injury/harm. Now he is before this Court committing the same civil and criminal wrongs he is fully aware of is prohibited by laws/statutes – the U.S. CONSTITUTION. Defendant Crews/Monroe were hoping to push the Plaintiff to the same point as Carl Brandon (Port Gibson, Mississippi shooting – wherein some alleged Brandon was being harassed in the same manner as Monroe and his clients are doing the Plaintiff; following her from job-to-job, attorney-to-attorney, etc. for purposes of getting her fired/terminated and going to great extremes to destroy her life). *Smith v. St. Regis Corp.,* 850 F.Supp. 1296 (S.D.Miss.Jackson.Div.,1994) (**WINGATE**) - A "conspiracy" is combination of persons for purpose of accomplishing unlawful purpose or lawful purpose unlawfully. *Frye v. American General Finance, Inc.,* 307 F.Supp.2d 836 (S.D.Miss.W.Div.,2004) (**BRAMLETTE**) - In Mississippi, a conspiracy is a combination of persons for the purpose of accomplishing an unlawful purpose or a lawful purpose unlawfully.

36. This Court has defined, in past decisions, what constitutes a conspiracy. Based upon the facts, evidence and legal conclusions presented in the Complaint filed in this instant lawsuit and Plaintiff's subsequent pleadings, a reasonable mind may conclude that Defendant Crews and her counsel engaged in acts which constitute a conspiracy. Moreover, their willful, deliberate and malicious act and/or role played in the termination of Plaintiff's employment with Page Kruger & Holland. *Norris v. Krystaltech Intern, Inc.,* 133 F.Supp.2d 465 (S.D.Miss.Jackson.Div.,2000) (**LEE**) - Mississippi recognizes a cause of action for conspiracy, described as combination of persons for purpose of accomplishing an unlawful purpose or a lawful purpose unlawfully.

37. Plaintiff believes, as a matter of law, that a conspiracy existed, and under said belief filed a lawsuit in this Court addressing conspiracy (See Civil Action No. 3:07-cv-00099. *Dale v. Ala Acquisitions, Inc.,* 203 F.Supp.2d 694 (S.D.Miss.Jackson.Div.,2002) (**LEE**) - Under Mississippi law, right of action exists for civil conspiracy.

Plaintiff request this Court exercise its inherent power and discretion and have Defendant Crews' statement(s) and/or material(s) indicated here as well as above stricken and/or statements within Defendant Crews' MFSCH stricken, in that it is irrelevant, impertinent and immaterial to this instant lawsuit, was provided in bad faith, is legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers"). . ..

III: FEDERAL RULE OF CIVIL PROCEDURE – RULE 11 SANCTIONS:

In applying the "snapshot" rule the MFSCH was submitted in bad faith, is frivolous and provided merely for purposes of harassment, abusive attacks on the Plaintiff and her

counsel, abuse of the judicial process and this Court's electronic filing system, delay and hindering of proceedings, needlessly increasing the cost of litigation, to obstruct the administration of justice, deprive the Plaintiff equal protection of the laws and due process of laws. Prior to filing the MFSCH, Defendant Crews/Monroe knew and/or should have known that it was factually and legally insufficient. Said acts which also warrants this Court's issuing sanctions of and against Defendant Crews/Monroe through its ***inherent*** and discretionary powers. In support thereof Plaintiff states:

> 38. Defendant Crews allowed and/or authorized Monroe to file the MFSCH on her behalf which is clearly unsupported and is cluttered with *sweeping accusations* for purposes of attacking the Plaintiff; as well as Plaintiff's attorney. Monroe knowingly, deliberately and with malicious intent chose to impugn the professional integrity of Plaintiff's counsel, Abioto, on basis of unverified, unsubstantiated, and inherently unreliable information. *If this Defendant and her counsel had any such information to support their abusive and hostile attacks on the Plaintiff and her counsel Abioto, they should have produced such evidence*. Clearly his OUTRAGE as he stated is evidenced in said pleading *due to* ***his failure*** to obtain a dismissal of this lawsuit and his inability to control the Plaintiff. Through said MFSCH, it appears that this Defendant and her counsel want this Court to believe that the Plaintiff has no role or input in the way this case is to proceed and/or right to aid in the representation of this lawsuit. Moreover, finding out, that it is Abioto who works for the Plaintiff and is required to represent Plaintiff and the Plaintiff's interest in this action. The MFSCH is neither certified in accordance with Rule 11 of the FRCP. The statutes/laws are clear that sanctions are warranted of and against Monroe as well as his client, Defendant Crews. *Bockman v. Lucky Stores, Inc.,* 108 F.R.D. 296 (1985) - Defendants' counsel would be required to pay, pursuant to Federal Civil Rule 11 governing signing of pleadings, reasonable costs and attorney fees incurred by plaintiffs in defending a motion to decertify the plaintiffs' class or disqualify class counsel because of counsel's alleged ethical violations; **before** filing a motion filled with such ***sweeping accusations***, defense counsel *should have*, at **a minimum**, first filed a request for an extension of the deadline based on newly discovered evidence rather than choosing to **impugn** the professional integrity of plaintiffs' counsel ***on basis of unverified, unsubstantiated,*** and ***inherently unreliable*** information. Fed.Rules Civ.Proc.Rule 11, 28 U.S.C.A.

39. A reasonable mind may conclude that Defendant Crews has authorized and approved the methods, acts and course taken by Monroe in his representation of her. Therefore, supporting and condoning the filing of the MFSCH. A pleading clearly support the abusive attacks on the Plaintiff and her counsel, Monroe's abuse of the judicial process and this Court's electronic filing system to carry out such unlawful/illegal and unethical attacks on the Plaintiff and her counsel. All with the approval of Defendant Crews. Defendant Crews being entitled to review the MFSCH prior to its filing by Monroe. Said filing which was submitted in bad faith for abusive purposes and means and to needlessly increase the cost of litigation. Monroe acknowledges his client's paying for such conduct in his letter to this Court, the

MFSCH, and representations to Plaintiff's counsel. *Devine v. Wal-Mart Stores, Inc.*, 52 F.Supp.2d 741 (S.D.Miss.,1999)(**WINGATE**) - Where a client is shown to have been personally aware of, or otherwise responsible for, a bad faith procedural action, client may be sanctioned individually without also imposing the sanction on client's attorney. *Taylor v. County of Copiah,* 937 F.Supp. 580 (S.D.Miss.,1995) (**WINGATE**) - Federal rule authorizing sanctions does not apply to all litigation misconduct but only to signing of papers served or filed in violation of rule; party seeking sanction must show that nonmoving used abusive tactics, or abused process, or that he pressed litigation merely to harass or needlessly to increase cost of litigation.

40. While Defendant Crews may attempt to play the "innocent puppy" act, she is far from that. According to the pleadings filed on her behalf, a reasonable mind may conclude she and her employer(s) knew of prior legal actions by the Plaintiff and used such knowledge to commit civil and criminal wrongs against the Plaintiff. Moreover, she knew and/or should have known of Monroe's actions; however, elected not to fire him. She had a duty to be informed and be abreast of how Monroe was conducting representation of this matter on her behalf. Especially in filing of her recent MFSCH. In the interest of justice, said Defendant's statements and materials in MFSCH are to be stricken. *Augustus v. Board of Public Instruction of Escambia County, Fla.,* 306 F.2d 862 (5th Cir. 1962) - Action of striking pleading is drastic remedy to be resorted to only when required for purposes of justice.

41. In keeping with *Business Guides*, this Court has entered rulings which are clear on who may sign pleading(s). *Spillers v. Tillman,* 959 F.Supp. 364 (S.D.Miss.W.Div.,1997) (**BRAMLETTE**) - Rule 11 does not authorize one party to make representations or file pleadings on behalf of another, but rather, requires that each pleading, motion, or other paper submitted to court *be signed* ***by party*** or its attorney of record, if represented.

42. The MFSCH is frivolous and is without arguable merit both in law and fact. *Hogan v. Midland County Com'rs Court,* 680 F.2d 1101, (5th Cir.,1982) - Claim is "frivolous" only if it is without arguable merit both in law and in fact.

43. Neither this Court nor Defendants and their counsel to this action can say, "we didn't know Plaintiff felt that way because she never made such claims and/or averments." To the contrary, the record evidence will support the issues timely raised and presented to this Court to review and address. In so doing, Plaintiff has preserved ALL issues for appeal purposes:

> *F.D.I.C. v. Mijalis,* 15 F.3d 1314 (5th Circ. 1994) - **(n. 5)** Court of Appeals will not reverse district court's evidentiary rulings unless they are erroneous and substantial prejudice results; burden of proving substantial prejudice lies with party asserting error. **(n. 12)** If litigant desires to preserve argument for appeal, litigant must press and not merely intimate the argument during proceedings before district court; if argument is not raised to such a degree that district court has opportunity to rule on it, Court of Appeals will not address it on appeal.

McQueen Contracting, Inc. v. Fidelity & Deposit Co. of Maryland, 863 F.2d 1216 (5th Miss. 1989) -Court of Appeals would not address argument not considered by district court based on defendant's failure to raise it prior to motion for reconsideration of district court's summary judgment ruling.

Marohnic v. Walker, 800 F.2d 613 (1986) - Plaintiff adequately preserved claim based on First Amendment by pleading the First Amendment in his complaint and interposing his claim in
response to motion to dismiss even though his response to motion for summary judgment did not explicitly refer to that claim.

Therefore, Plaintiff request this Court exercise its inherent power and discretion and have Defendant Crews' statement(s) and/or material(s) as indicated above and/or statements within Defendant Crews' MFSCH stricken, in that they are irrelevant, impertinent and immaterial to this instant lawsuit, was provided in ***bad faith, is legally and evidentiary insufficient (this Court applying the "snapshot" rule and "inherent powers"),*** *is sham/frivolous and provided for unlawful and unethical purposes, and does not present any facts, evidence or legal conclusion(s) to support defenses asserted. The information in MFSCH was provided for frivolous filings and misuse of the judicial process and is neither certified as required under Rule 11. Defendant Crews/Monroe failed to make reasonable inquiry into to the laws and facts underlying the MFSCH filed. Thus, moving this Court to issue the applicable sanctions pursuant to Rule 11 of the FRCP and/or governing laws of and against Defendant Crews and her counsel, Clark Monroe.*

WHEREFORE, PREMISES CONSIDERED, for the above and foregoing reasons, Plaintiff moves this Court for the following relief:

a. Strike the statements and materials in *Defendant Melody Crews' Motion for Show Cause Hearing and for General Relief,* including: Opening Paragraph; Paragraphs numbered 1., 2., 3., 4., 5. and supporting material provided at/in Exhibit A, 6., 7., 8., 9., 10., 11., 12 – and supporting materials provided at/in Exhibit A., 13 – and supporting materials provided in Exhibit B, 14., 15. and its subparagraphs lettered a., b., c., d., e., and e. (sic); and closing paragraph beginning,, "WHEREFORE, PREMISES CONSIDERED, Melody Crews" and the relief sought in said closing paragraph. Furthermore, Defendant Crews' MFSCH was provided in *bad faith* for purposes of sham/frivolousness, harassment, delay, hindering proceedings, malicious intent, obstructing the administration of justice to prejudice this Court against her, increasing the costs of litigation, to deprive Plaintiff equal protection of the laws and due process of laws, and does not present any facts, evidence or legal conclusion(s) to sustain the arguments made and the relief sought through her pleading.

b. Plaintiff moves this Court to apply the "**snapshot rule,**" its inherent powers and other power granted it under the statutes/laws governing said matters and issue the appropriate Rule 11 sanctions of and against Defendant Crews and her attorney, Clark Monroe. If permissible, Plaintiff moves this Court to sanction each of these Defendants in the amount of $150,000.00 or an amount in which this Court deems

just, proper and fair considering the violations complained of herein. Said sanctions applicable given the facts, evidence and legal conclusions to support their outrageous conduct and conspiracy they have continued to carry out.

c. Plaintiff moves this Court to issue the applicable sanctions of and against Clark Monroe, up to including reporting him to the Mississippi Bar and recommending sanctions to include, "disbarment," "suspension," "contempt," and/or the maximum punishment allowed to deter such blatant judicial abuses and violation of the Code and/or laws governing attorney conduct.

d. If permissible, Plaintiff moves this Court for attorney for attorney fees for the cost, expense incurred in having to defend against Motion to Strike.

e. Any and all other relief permissible under the laws to deter the wrongs complained of herein.

f. Jury Trial Demanded on all Triable Issues.

Respectfully submitted this **6th** day of **March, 2008**.

VOGEL NEWSOME, Plaintiff

Wanda Abioto, MSB No. 8156
ABIOTO LAW CENTER
2353 Syon
Memphis, Tennessee 38119
Phone: (901) 725-3719
Facsimile: (901) 767-4441
E-Mail: Abioto@hotmail.com
COUNSEL FOR PLAINTIFF[5]

[5] Plaintiff being notified by her attorney of her counsel's illness and possible withdrawal issue, therefore submits this pleading on Plaintiff's behalf and in her protected interest in this lawsuit.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the forgoing pleading was mailed via U.S. Mail first-class mail on:

Lanny R. Pace, Esq.
STEEN DALEHITE & PACE, LLP
401 East Capitol Street, Suite 415
Post Office Box 900
Jackson, Mississippi 39205
Counsel for Defendants Spring Lake Apartments and The Bryan Company

Clark Monroe, Esq.
Benny M. "Mac" May, Esq.
DUNBARMONROE, PLLC
1855 Lakeland Drive, Suite P-121
Jackson, Mississippi 39216
Counsel for Defendant Melody Crews

Dated this 6th day of **March, 2008.**

VOGEL NEWSOME

VOGEL NEWSOME

Post Office Box 14731
Cincinnati, Ohio 45250
Phone: 601/885-9536 or 513/680-2922

March 12, 2007

Honorable Tom S. Lee (Judge) lee_chambers@mssd.uscourts.gov
Honorable Linda R. Anderson (Magistrate Judge) anderson_chambers@mssd.uscourts.gov
USDC – Southern District (Jackson Division)
316 James O. Eastland
United States Courthouse
245 East Capitol Street
Jackson, MS 39201-2409

RE: *Vogel Newsome v. Crews, et al; USDC-Southern District (Jackson);*
Case No. 3:07-cv-00099 TSL LRA

Dear Judge Lee and Magistrate Anderson:

Enclosed is the *Plaintiff's Objection To and Motion to Strike Statements and Materials of Defendant Crews' Motion for Show Cause Hearing and for General Relief and Requests for Rule 11 Sanctions of and Against Defendant Crews and Her Counsel Clark Monroe and Jury Trial Demanded on Triable Issue(s)* submitted for filing on Monday, March 10, 2008. This Court should have received Plaintiff's response to Defendant Crews' pleading in the 00560 civil action pending before this Court.

While I am in receipt of a copy of counsel's, Clark Monroe's, letter of February 25, 2008, I believe the attached pleading (BRIEF ONLY attached hereto – complete original with exhibits has been submitted to Clerk's attention) will address any such attacks he has made on me and my ability to see through such façade. I believe the continuous labeling of me as a *"serial litigator,"* **has run its course.** I find Mr. Monroe's letter to the Judges/Magistrate Judge meritless, scandalous, insulting and offending. Said issue is also addressed in the attach pleading along with the United States Supreme Court's addressing what would be considered abusive filings (i.e. *In re McDonald,* 489 U.S. 180, 109 S.Ct. 993 (1989), *Lakes v. State,* 333 S.C. 382, 510 S.E.2d 228 (1998), *In re Maxton,* 325 S.C. 3, 478 S.E.2d 679 (S.C.,1996). Contacting this Court in the manner in which he has repeatedly done so, merely are efforts in attempting to get this Court to engage in his unlawful/illegal and unethical practices against me. Moreover, acts done to deliberately get the fact-finder for form a bias and prejudice towards the Plaintiff based on such information, rather than determining this matter based on the facts, evidence and laws presented.

Additional concerns I have from his February 25, 2008 letter, is that he seems rather desperate to see me and mask such behind requesting an **"in court hearing."** As stated in the attached pleading filed with this Court, I am requesting that this Court put a stop to his *fetish/obsession* with me. From the evidence in the record of this Court as well as in the attached pleading, Mr. *Monroe has followed me from job-to-job, attorney-to-attorney, etc.* providing them with information about past lawsuits filed by me against other employers. Now, as he has done with the Hinds County Court of Jackson, Mississippi, he is working on the Judges/Magistrates in this Court. When is this Court going to stop such unlawful/illegal and unethical practices of Mr.

EXHIBIT "8"

lee_chambers@mssd.uscourts.gov
anderson_chambers@mssd.uscourts.gov

Monroe? I have very serious concerns as to why he has felt so comfortable committing what he clearly knows are prohibited actions. Furthermore, I believe the **Fifth Circuit** Court of Appeals will be very *disturbed* and *appalled* by the fact that Mr. Monroe and others have taken decisions rendered by it to commit *"civil"* and *"criminal"* wrongs against me. The **Fifth Circuit** has authorized through its past decision(s) that I may file the applicable actions (i.e. *". . . plaintiff is instructed to seek any further relief to which she feels entitled in the Fifth Circuit Court of Appeals, as may be appropriate **in due course***" (2002 WL 1303123), and "*Newsome also is not entitled to the writ because she has another adequate remedy available, i.e. **she could file suit in court against her employer. . .***" (37 Fed.Appx. 87)), I intend to do so. Such bogus and sham/frivolous efforts by Mr. Monroe and other Defendants and their counsel merely to try and keep me from filing lawsuits – lawsuits which are *clearly **inevitable***, based on the evidence and their civil and criminal wrongs committed against me – are clearly prohibited by laws. If they **did not** want to be sued, they should have used wisdom and not engaged in the civil and criminal acts in which they did against me.

While Mr. Monroe went to great lengths to see that I was blacklisted, he and others are now disappointed that I have obtained employment elsewhere. With my employer, they make it clear that they will not discriminate against an employee because this employee has filed lawsuits. How is it that my current employer is aware of the laws and those in Mississippi clearly disregard such laws? It is obvious that when one is on the outside looking in and not having the facts behind information, they prematurely are induced into engaging in the corrupt activities of Mr. Monroe and others. *Furthermore, it is apparent that Mr. Monroe and others look to those who have a **deep-rooted** jealousy, envy, hatred, etc. towards me.*

It is important to note that Ms. Abioto does not represent me in this lawsuit. Ms. Abioto represents me in Civil Action No. 03:07-cv-00560 of this Court. While it is obvious from the underhanded, unlawful/illegal and unethical practices of Mr. Monroe and other Defendants counsel in the handling of filings with this Court – as they sought to obtain an undue advantage in this action against me – that as a *pro se* litigant I was not supposed to be able to defend this matter, their underestimation and assertions failed.

I would appreciate your assistance to seeing that the above pleading is filed in this action. Should you have any questions or require additional information, please feel free to contact me at (601) 885-9536 or (513) 680-2922.

Sincerely,

Vogel Newsome

Vogel Newsome

Enclosures

cc: Wanda Abioto, Attorney For Plaintiff in Civil Action 3:07-cv-00560
Counsel of record. (letter only)

Thursday, April 06, 2006

3/17 Port Gibson, Miss Man Kills Attorney Years After Losing Job Due to Sex Harrassment

Carl Brandon, 52 is accused of committing a shooting rampage that killed the an attorney and injured a county employee. Brandon, who had been fired as Claiborne County road manager in 1997, is accused of killing board of supervisors' attorney Allen Burrell and wounding county administrative assistant Loretha Porter between about 8 a.m. and 8:20 a.m. Brandon then surrendered at the sheriff's department about 8:30 a.m. Apparently, the deadly shooting rampage was the culmination of years of anger and frustration over what the shooter believed to be false accusations of sexual harassment. "I don't know how you can consider me a danger. I was made a criminal through the system ... The sexual harassment charges made against me were trumped up, yet the system allowed the board of supervisors to take them and run with them," Brandon said in court.

EXHIBIT "7"

Thursday, April 06, 2006

3/17 Port Gibson, Miss Man Kills Attorney Years After Losing Job Due to Sex Harrassment

Carl Brandon, 52 is accused of committing a shooting rampage that killed the an attorney and injured a county employee. Brandon, who had been fired as Claiborne County road manager in 1997, is accused of killing board of supervisors' attorney Allen Burrell and wounding county administrative assistant Loretha Porter between about 8 a.m. and 8:20 a.m. Brandon then surrendered at the sheriff's department about 8:30 a.m. Apparently, the deadly shooting rampage was the culmination of *years of anger and frustration over what the shooter believed to be* ***false*** *accusations of sexual harassment.* **"I don't know how you can consider me a danger.** ***I was made a criminal through the system*** *... The sexual harassment charges made against me were trumped up, yet the system allowed the board of supervisors to take them and run with them,*" Brandon said in court.

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Reply »

Report Abuse

#4

Mar 21, 2006

Shelly jones

Nashville, TN

I was sad to hear what had happend in my home town, and shock to find out that it was Carl, that went off. ***Some time a person try to walk away from a problem,*** *but there are people in this world that want let them do that.* **This man had left this job** ***and move on,*** *but that was not good enough.* ***They had to call his job*** *and tell them what happend 9 years ago,* ***and got this man fired***. I hate that he let the devil take over him at the time, but I do understand. My heart goes out to Carl and his family, and to Miller & Burrell family as well. I hope that we can learn something from this tragedy. I will keep everyone in my Prayer.

Reply »
|
Report Abuse
|
#18
Jul 11, 2007

CASSANDRA COOK BUTLER
AOL

Joe wrote:
Wow. You understand why this coward shot another human being in the face with a 12 guage shotgun and your heart goes out first to him and his family. He set in his vehicle in ambush to kill another human being. He knew exactly what he was doing, the snuffing out of a life as well as the trauma and devestation he was going to cause Michelle and the kids. What a despicable, cowardly act. My sympathy is with the victims families, and I don't mean the guy who had his house shot into and has to replace some windows. Brandon should face the full wrath of our Justice system ASAP!
Carl Brandon was a victim also. **He had lost his job** *because someone said he had harrassed them.* **He lost his reputation and the respect of some**. *When he tried to move on* **some vindictive, vicious persons went to his next job and scandalized him**. *He fought through* ***every legal avenue*** *available to him and found* ***no*** *justice*. I am so sorry for him and the entire Brandon family. They are a proud old family who have made Port Gibson their home for over a century
True lives were lost in this tragedy. True families were wounded and have to live with the irrevocable loss of their loved ones.
But Carl's life has been lost also. The rest of his life to be spent in a penal institution. His family also has suffered irrevocable loss.
my sympathy goes out to all concerned.

The Vicksburg Post.
SINCE 1883 - EVERYTHING A HOMETOWN NEWSPAPER SHOULD BE

Vicksburg, MS

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News

Carl Brandon is escorted into a Forrest County court Wednesday by a Forrest County deputy sheriff. **(Danny Barrett Jr. • The Vicksburg Post)**

Victim's wife tearfully recalls day of shooting

By Danny Barrett Jr.

[05/31/07] **HATTIESBURG** - The wife of the Port Gibson attorney gunned down outside his workplace on March 17, 2006, testified this morning that she sped to his office as soon as she received a call that "something was going on."

"I saw him lying in the street," Michelle Burrell said in her tearful five minutes of testimony in the Masonic Temple, a makeshift courtroom in Hattiesburg where the state is attempting to prove Carl Brandon, 52, guilty of murder, shooting into an occupied dwelling and aggravated assault.

Others taking the stand this morning told about the scene outside Allen

Burrell's law office on Main Street, including hearing the sound of gunfire.

This is the second day of testimony in the trial in which prosecutors are arguing for a life sentence for Brandon. On Wednesday, they said he exhibited all the signs of distinguishing right from wrong when killing Burrell and targeting two other county employees.

Ed Blackmon Jr., attorney for the former Claiborne County road manager, said while the defense "won't dispute the facts as laid out by the state," psychiatrists and psychologists will be called to testify Brandon was not capable of controlling his actions. Pent-up emotions stemming from a sexual harassment accusation nine years before the 30-minute spree in 2006 were too strong to resist, Blackmon said.

The jury of eight women and four men was picked in Port Gibson and bused to Hattiesburg.

If Brandon is found guilty of murder, the sentence is life without parole. If found innocent by reason of insanity, the sentence is confinement for an indefinite period of treatment. Other verdicts, including manslaughter and not guilty, are also possible.

"The evidence will show the man was mad," said Scott Johnson of the Attorney General's Office, who is joining Claiborne County District Attorney Alexander Martin and Crystal Springs attorney Marty Arrington in presenting the case. "There's a big difference between being mad and being insane."

The charges say Brandon waited for Burrell to arrive at his office, then fired at him with a shotgun as he stepped out of his vehicle just after 8 a.m., killing the attorney almost instantly.

Brandon next drove to the home of then-Claiborne County Administrator James Miller and fired several blasts into the home. Akina Barnes, a 16-year-old who lived with her grandfather near the Millers' home, testified Wednesday about hearing the gunshots. She said the blasts were aimed at the Miller residence. Miller was home, but not injured. His family was out of town.

In testimony this morning, Assistant Port Gibson Police Chief Terrence Watkins said five empty shells were found outside Miller's home.

The next shooting scene was the Claiborne County Road Department building on Mississippi 18. Clerical employee Loretha Porter was wounded at her desk. Dr. Michael Gleason of University Medical Center, where Porter was hospitalized for five days, said the wounds were to each side of her abdomen and were life-threatening because of the type of weapon used, a handgun, and their location.

Also testifying was Claiborne County Chief Deputy Freddie Yarbrough, who told jurors he read Brandon his rights before arresting him upon when Brandon drove to his last stop and turned himself in at the sheriff's department about 8:30 a.m.

Yarbrough's testimony indicated an arsenal was found inside Brandon's SUV at the time, including the 12-gauge shotgun used to kill Burrell, a sawed-off shotgun, the pistol used to wound Porter and another rifle.

An empty liquor bottle was also found inside the vehicle, Yarbrough testified.

Another witness, sheriff's office secretary Willie Mae Lush, was called by prosecutors because she recorded the voluntary statement by Brandon, one

that was videotaped and shown to jurors.

In her testimony, Lush said she incorrectly dated the transcript Nov. 17, 2006, instead of March 17, and Brandon's date of birth as Nov. 15, 2006, which she chalked up to confusing the date with Brandon's birth date, Nov. 15.

On cross-examination, Blackmon took Lush to task for making such an error and pointed out that his client read the document before signing it.

"He missed two important things, the date he was born and the date he signed it," Blackmon said.

Burrell, Miller and Porter all had roles in the 1997 dismissal of Brandon, who for years said he had been wrongly accused in order for a political change to be made in county employment.

His wrongful termination case made it to the Mississippi Supreme Court, which refused to hear the matter in 2002, which had the effect of upholding the firing.

Brandon continued to live in Port Gibson and even attended a board of supervisors' meeting the night before the Friday morning shooting spree. He worked, however, in Vicksburg, as a special populations teacher at Vicksburg High.

Burrell, who was 54, had practiced law in Port Gibson for 30 years and was attorney for Claiborne supervisors for 26 years. He also held a position on the professional responsibility committee of the state bar association.

His wife, Michelle, has long been an organizer of the annual Main Street Heritage Festival in Port Gibson, which in 2006 was held just a week after the shooting.

Judge Frank Vollor of Vicksburg's 9th Circuit Court is presiding and ordered the trial moved to a larger facility than the Claiborne County Courthouse. Hattiesburg Lodge No. 397 was about three-fourths full Wednesday.

The building is being used for Forrest County court proceedings because the regular circuit courtroom is being treated for Katrina-related mold in its air conditioning system.

Email Print A A A Text Size

Port Gibson 03/17/06

Former County Employee Goes on Shooting Spree

Updated: April 3, 2006 09:13 AM EDT

PORT GIBSON, Miss., (AP) -- The attorney for the Claiborne County Board of Supervisors was gunned down Friday and at least one other person was wounded during a shooting spree by an apparent disgruntled former county employee, officials said.

Sheriff Frank Davis said Carl Brandon, a former road manager, surrendered after the fatal shooting of Allen Burrell, 54, and the wounding of county employee Loretha Porter.

Davis said the investigation was ongoing and charges were being prepared.

Family members and others said Burrell, an attorney for about 30 years and board attorney since the mid-1980s, was shot in the face outside his law office in downtown Port Gibson.

Authorities said Porter, a secretary for the county road department, was taken by helicopter to the University Medical Center in Jackson, where she was reported in stable condition.

Police said Brandon sat in a vehicle outside Burrell's downtown law office, armed with a 12-gauge shotgun.

Allen Burrell

Loretha Porter

Check Out Our Life

- Home/Family
- Health
- Food
- Mor
- Aut
- Ent

Officers said after the fatal shot, Brandon drove to the home of Claiborne County administrator James Miller and fired shots into the house. Miller was not injured.

Miller said he was alone at home preparing for work when the first shot was fired about 7:50 a.m.

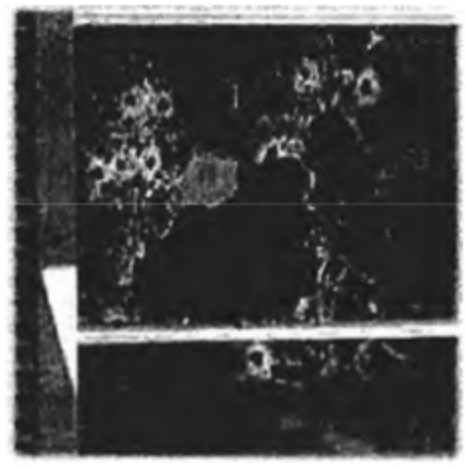
"At first, I thought it was a utility transformer and I didn't pay much attention. But then the shots came in rapid succession and I said, 'Something is wrong and I got on the floor and crawled to the middle of the house."'

Miller said he did not see the shooter drive away but that several of his neighbors reported seeing the vehicle.

County Chancery Clerk Gloria Dotson said residents here were in shock.

"The board attorney didn't make it," Dotson said. "He was a really good guy."

State Insurance Commissioner George Dale said he had worked with Burrell during dealings with the county supervisors on fire protection issues and "he was extremely helpful and was very professional in this office's dealing with him. This is just a tragedy."



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January 16, 2004

Mississippi's #1: Corporate Crime Reporter Ranks Most Corrupt State Governments

A new report examined the most corrupt state governments. The top 10? Mississippi, North Dakota, Louisiana, Alaska, Illinois, Montana, South Dakota, Kentucky, Florida and New York. [includes transcript]

As Connecticut Republican Gov. John Rowland face possible impeachment, we are going to take a look today at corruption within state governments.

Corporate Crime Reporter is releasing a report today titled "Public Corruption in the United States." The report ranks the 10 most corrupt states and the 10 least corrupt states.

The report is being released at a time when public corruption scandals are breaking out all over the country. The former Governor of Illinois, George Ryan, has been charged with taking money, gifts and loans in exchange for handing out state contracts to his donors. In Connecticut, three mayors and the state treasurer are in jail or heading to jail. And the Governor is under siege in a soap opera of a corruption scandal.

According to the report, the ten most corrupt states in the country are: Mississippi, North Dakota, Louisiana, Alaska, Illinois, Montana, South Dakota, Kentucky, Florida, and New York.

The ten least corrupt states in the country are: Nebraska, Oregon, New Hampshire, Iowa, Colorado, Utah, Minnesota Arizona, Arkansas, and Wisconsin.

- **Russell Mokhiber**, editor of the Corporate Crime Reporter.

JUAN GONZALEZ: We're joined by "Corporate Crime Reporter" editor, Russell Mokhiber.

RUSSELL MOKHIBER: Good morning.

JUAN GONZALEZ: Good morning, Russell. Could you tell me what you found. What are the most corrupt states in the union and how did you arrive on it?

Exhibit "b"

RUSSELL MOKHIBER: Well, actually the AP did a story this morning based on the report. The title is, "Image Problem, Louisiana, Not Number One in Corruption Anymore". And that's what we found. You know, the states that have the reputation of being the most corrupt, New Jersey, Louisiana, Illinois, Rhode Island, that's based on reputation, but we got a hold of a document from the Justice Department that has a statistical breakdown of public corruption convictions by state over the last ten years. So, no one has ever actually tried to rank the states to make a determination which is actually the most corrupt, reputation aside. And what we did was, we came up with a corruption rate by looking at the number of convictions over ten years for each state, per 100,000 population. And the most corrupt state in the union, according to our survey, is Mississippi, followed by North Dakota, Louisiana, Alaska and Illinois. New York comes in number ten--the tenth most corrupt.

The cleanest states in the union, the least corrupt, are Nebraska, Oregon, New Hampshire and Iowa, and Colorado. Those are the least corrupt five states. The other least corrupt fives from six through ten are Utah, Minnesota, Arizona, Arkansas, and Wisconsin. But two caveats on this; one is that these were convictions of public officials, state, federal and local in the states over ten years from 1993 to 2002, but not including 2003. The other thing is that--

JUAN GONZALEZ: It would depend in large measure also on how uncorrupt the prosecutors are who are conducting these cases.

RUSSELL MOKHIBER: One of the things the people at the Justice Department tell us is you can have an absolutely corrupt state, state-wide, through and through corrupt, and if there's not a US Attorney who wants to prosecute it, it's not going to show up. For example, in Hartford the whole corruption scandal was exposed by Governor Roland's opponent, Bill Curry, in the last election. But the press didn't pick up on it. And it took a couple of young assistant US Attorneys after the US Attorney in Hartford recused himself to go after the governor. The other thing is in Connecticut you have tens of millions of dollars of graft and illegal contracts and so forth that never create an uproar. What created the uproar was that the governor had a hot tub and cathedral ceilings put in his cottage in Litchfield, Connecticut and told everyone that he actually went and bought the hot tub and he paid for it. He lied to the public. So, you can get away with millions of dollars in corruption, but if you say you went and bought the hot tub and put it in and lie about it, then you are going to be impeached.

JUAN GONZALEZ: Any reaction from the state of Mississippi as to the most corrupt state in the union?

RUSSELL MOKHIBER: No, but we're waiting for Haley Barber and Trent Lott to weigh in. They're not happy. The AP Reporter in Mississippi is doing a story. Bill Curry, who lost twice to Roland after trying to expose the corruption says now that he thinks Connecticut is the most corrupt state in the union, but our survey shows them coming in at 31. So, maybe they're gaining ground. He calls Connecticut, "Louisiana with foliage". But the people in Louisiana are not at all happy. They admit they have a problem. The last three insurance commissioners in Louisiana have gone to jail. The agricultural commissioner is under indictment. They know they have a reputational problem, but they think they, too, have foliage, so they're upset with Curry's analysis. But seriously, one of the problems is, "Why did this happen in Connecticut?" Connecticut has a strong economy but a weak political economy. Politics in Connecticut are not very active. People pay attention to the economy, but not to the politics. One of the problems is we don't discuss public corruption. We discuss it when it blows up, but not as a generic problem. If you type in corruption into like a Google news engine, what comes up are a lot of stories from overseas.

JUAN GONZALEZ: Okay, well Russell, on that note, we thank you for being with us, and we'll keep—

RUSSELL MOKHIBER: The report is on www.corporatecrimereporter.com.

AMY GOODMAN: And you are holding a news conference today.

RUSSELL MOKHIBER: At 10:00 a.m.

AMY GOODMAN: At the National Press Club in Washington. Thanks for being with us. Russell Mokhiber of the "Corporate Crime Reporter."

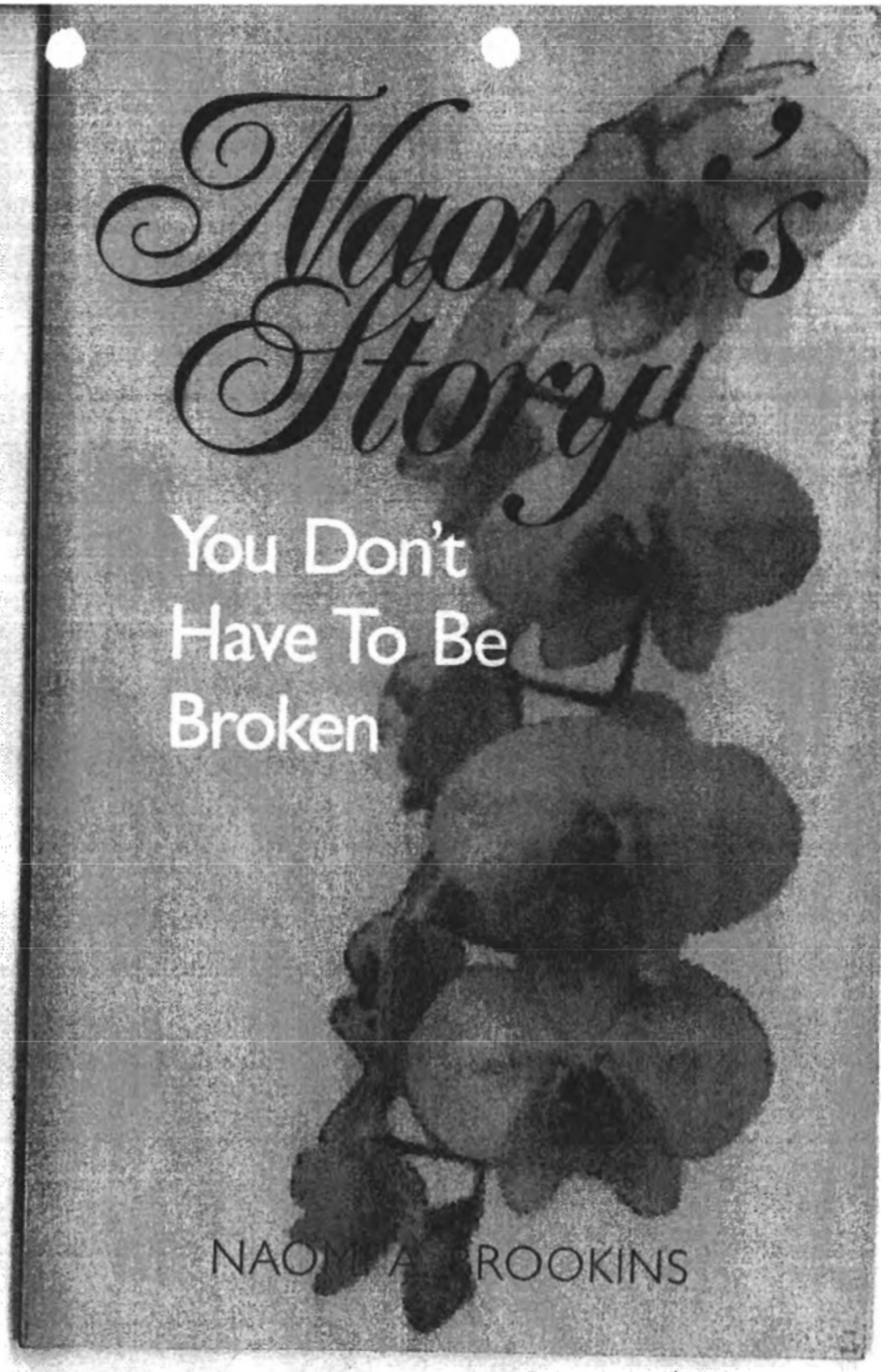

Exhibit "5"

$8.95

Naomi's Story: You Don't Have To Be Broken is a compelling work of strength and perseverance. Naomi's dedication to succeed against tremendous odds and obstacles serves as an inspiration to us all and her self-confidence is contagious.

The book is spiritually uplifting as well, for it provides reasurrance that there is a higher being gently guiding us through life.

Naomi A. Brookins is a teacher, librarian, college lecturer, public speaker, and writer. She earned a bachelor's degree in education and master's degrees in library science and U.S. history. She has also been the recipient of the Superior Public Service Award for her work in the Chicago Metropolitan Area.

From **Naomi's Story: You Don't Have To Be Broken**

My day, my hopes, and yes my life had taken on a new dimension. My faith in God and in myself had created a vista for my life.

✦

I now knew that the power filled action that my faith endowed me with could never be destroyed by anyone or anything.

If there were many storms—and I knew that there would be many with the intent of shattering my hopes—I would not be afraid.

✦

"If I don't sell, you're going to kill me. If I sell, you're still going to kill me. Therefore, I'm going to die standing like a giant for my God."

✦

I said to Him, "God, I want you to become my best friend and teacher." Within my heart I heard these words, "Naomi, I will never leave you alone. I will be all that you need."

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American Literary Press, Inc.
Five Star Special Edition

As I continued to read the Bible and grow in spiritual strength, I began to ask questions about the scriptures that I did not understand. Children and adults attended the same Bible class in which my papa was the teacher. As expected, I received no answers from my papa. He demanded that I just listen and ask no questions. My uncle, who was the pastor of the church, felt the same way. My mama let me know that only adult men discussed the Bible in church. I then knew that no help was forthcoming. Therefore, I got out of bed very early in the morning and borrowed my mama's Bible and then left the house. When I found a quiet place for study and meditation, the answers that I needed burst forth with clarity.

One very hot Wednesday in August my grandma let me know that I was mature enough to be given answers to many of my questions. She reminded me that I would be eleven years of age in December. She also let me know that she was counting on me to be successful with my life. She asked me to come to her house on Saturday and stay for a long discussion.

When I arrived at her house, she seemed very sad. She, my aunt, and I went into the front bedroom where we sat in front of her big fireplace. She and my aunt sat in rocking chairs; I sat in a comfortable but smaller chair with a firm backrest. I began to feel that something serious was about to take place. I quietly bowed my head and asked God to give me the heart to understand all that I heard.

My grandma began by stating that she had heard about all of the questions that I had been asking. She let me know that Mrs. Killingsworth had asked her to explain to me why I would have to stop talking about becoming a teacher. This was because Mrs. Killingsworth wanted to keep her job so that she could help me quietly. She let me know that our conversation that day would always be a secret between the three of us. She stressed that for the welfare of all, I must never talk about what was about to be said. At that moment the feeling of being a child vanished and I began to feel the weight of responsibility.

I learned that Rev. Milligan Newsome, her husband and my grandfather, was a special kind of person who took God's

work very seriously. He was a preacher, educator, teacher, and one who felt that it was his duty to look out for all those who lived in Spindle Bottom. Everyone loved and depended on him. All of this land around our houses, church, and school once belonged to him. He, along with one deacon, built Clark Creek Church and school. He was supported by two very powerful men of God, Rev. Charles Harrison Mason and Rev. Charles Price Jones.

"When the white community saw the progress that your grandpa was making, they tried to force him to sell all of his land. He refused to even discuss it with them. He then began to advise others not to sell their land."

My grandmother stood and walked over to where I was sitting. She placed her arm around my shoulder and said, "Naomi, your grandfather was a wonderful, stubborn, black Indian, God fearing preacher who did not fear what man could do to him.

"Within a year the head of a prominent white family came to him and let him know that if he did not sell his land, he would be killed. Your grandfather looked him straight in the eye and said, 'If I don't sell, you're going to kill me. If I sell, you're still going to kill me. Therefore, I'm going to die standing like a giant for my God.'

"Shortly after this encounter, your grandfather went down by the covered bridge to cut firewood. Your papa, who was only seventeen years of age and very devoted, went with him. The man who had voiced the threat came by the house and asked me where had that nigger gone. He was carrying a rifle and a baseball bat. He stated that he only wanted to talk to that stubborn boy. I made the mistake of letting him know where they had gone.

"As the white man walked away from me, I knew within my heart that your grandfather would be killed. When he found your grandfather and shot him, your papa stood and watched. Your papa helped his dad to climb into the wagon. Your grandpa always carried the Holy Bible with him. He took the Bible from the wagon and stumbled into the house to let me know that he

had been shot. Your papa and I put him in the bed. He asked me to place the Bible under his pillow, but he could hardly speak as he said, 'My love, teach our five children not to hate anyone.' He then gasped for breath and fell asleep."

My grandmother went on to say that there was a very strange look on my papa's face. She said that she had never heard anyone cry so loud and strange. "His screams seemed to shake his whole body. He was totally out of control. I did not know what to do. He said over and over that no one should have told the man where they were.

"To this day, I feel so guilty. I knew that your papa would never be the same. He seemed to be falling apart. He was truly a broken young man."

At this point my grandma became very emotional and as she was leaving the room, she demanded that my aunt finish the story. The following is the rest of the story.

"Within a year after this, the man who murdered your grandpa took all of the land. He went around bragging about how he had killed that nigger Indian and then took his land. There was no law in Mississippi that would help the family. They were left at the mercy of the murderer.

"About two years later, the murderer offered to give back part of the land. Your grandma refused to accept the offer. She said that she wanted all of her land or none. None is what she received. Within this same year, the murderer entered the hospital in Vicksburg, Mississippi. He was suffering and dying from cancer that had consumed his whole body, including his brain. The word got around that as he was dying, he continued to scream these words, 'I'm sorry that I killed that nigger Indian preacher for nothing.' Still the law did nothing about it."

After my aunt had finished talking, there was complete silence in the room. I asked for permission to go outside for a little while. She said, "Yes Naomi, take a few minutes away from all of this. You're still so very young and yet you wanted to know." As I left the room, I felt so very, very tired.

When I returned, I thanked my aunt and grandma for letting me know just what happened to my grandpa. My grandma then

said that she was sorry that she did not take the part of the land that was offered to her. I answered her by saying that I understood. She then said, "I want you to let us know how you feel about what is taking place in your life and with your family."

This was the moment that I had been waiting for. I began by saying that my papa was not seventeen years of age anymore. "He is a grown man with a family. He needs to let us know that he loves us. Everyone in the house is afraid of him. I want to become educated so that I can help all of us. I would like to buy back some of the land that belonged to grandpa. I know that we're sharecroppers who grow a lot of corn, cotton, sugarcane, potatoes, peanuts and much more. I don't understand why my papa gives our share of the crop to other people. Most of the time we have nothing to eat. All of our neighbors have their own homes, wagons, mules, trucks, etc. We have nothing. My papa even sold the cows, horses and hogs that my mama's papa gave her. He even gets angry when we go by a friend's house and get a glass of milk. He even sells our food and uses the money to send the church's secretary away to high school. Why doesn't he want any of us to go to high school? He doesn't even want my two older brothers to finish eighth grade."

There was so very much more that I wanted to say. However, I was too exhausted.

At that moment everyone began to cry. My aunt and grandma said that they did not have the answers to all of my questions. They said that they believed that I had the kind of faith that my grandpa had. With this kind of headstart, I would someday be able to answer all of our questions. I promised them that I would not let them down.

Now that I understood, to some degree, why my papa was so full of hate and anger, I asked, "Why am I the only one in my family who is always in so much pain?"

My grandma asked my aunt to explain this to me.

My aunt began by saying that when my mama gave birth to each baby, my papa demanded that my mama herself cut the umbilical cord. "Even though we knew of a midwife who would have done the job, your papa would not listen to anyone. With

LASH MARINE SERVICES, INC.

MEMORANDUM

TO: WHOM IT MAY CONCERN

FROM: Robert K. Lansden
Vice President

DATE: July 11, 1996

RE: ***VOGEL D. NEWSOME***

This letter is to confirm and recommend Ms. Vogel Newsome to a position of Executive Assistant, Administrative or greater. While working with Lash Marine, she performed the duties of Executive Assistant with skill and energy. Her spirit and motivation acted as a beacon of light to others. Her leadership and training of others was a great service. Always willing to share; she possess a unique ability to teach complex skills to the beginner and bring them quickly up to speed. In addition, being a caring and concerned citizen she put aside her time to train and work with Training, Inc. employees to develop their office skills for a better future.

She is an asset and will be sorely missed at Lash Marine.

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MARINE PERSONNEL - TEL: (504) 529-5461 - FAX: (504) 593-6941 DIR FAX: (504) 593-6941 TLX: 587435 (CGULFNO)

EXHIBIT "4"

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ATTORNEYS AT LAW
587 HIGHLAND COLONY PARKWAY
RIDGELAND, MISSISSIPPI 39157

TELEPHONE (601) 969-4140
TELECOPIER (601) 960-4203

RALPH B. GERMANY, JR.
Direct Dial: (601) 914-1735
rgermany@purdygermany.com

MAILING ADDRESS:
P.O. DRAWER 1079
JACKSON, MS 39215-1079

August 18, 2003

Ms. Jane Sanders
Legal Resources, Inc.
1675 Lakeland Drive, Suite 306
Jackson, Mississippi 39216

RE: *Vogel Newsome*

Dear Ms. Sanders:

This letter follows-up my telephone conversation with your office on August 15, 2003. As you know, Bill Purdy and I just recently formed this firm. I left another firm to start this one. After leaving my previous firm, I needed a temporary secretary. For the last several weeks your office provided us with Ms. Vogel Newsome.

I have been very, very pleased with Vogel, not only in terms of her work product, but also in terms of her attitude and personality. I would rate her as one of the best legal secretaries with whom I have ever worked. I would highly recommend her to any one who is looking for a full-time legal secretary. If my previous secretary were not rejoining me, I would want Vogel to be my new permanent secretary.

If any one would care to discuss Vogel with me, please do not hesitate to give them my name and number. I will be more than happy to talk with them.

I am not certain of the exact day when my previous secretary will rejoin me. It could be immediately, or, it could be a couple of weeks. In light of that, we would like to request that we be allowed to continue to work with Vogel until further notice. However, the last thing I want to do is have Vogel miss another good opportunity that might lead to permanent employment. Therefore, if she must be reassigned, I will understand, but grudgingly so.

If you have any questions, please do not hesitate to give me a call.

Sincerely yours,

PURDY & GERMANY, PLLC

Ralph B. Germany, Jr.

RBGjr/vdn

FOURTH CIRCUIT DRUG COURT PROGRAM
STATE OF MISSISSIPPI

July 7, 2006

Ms. Denise Newsome
Post Office Box 31265
Jackson, MS 39286

RE: Denise Newsome Letter of Recommendation

TO WHOM IT MAY CONCERN:

I was first introduced to Ms. Newsome over five (5) years ago. Since that time, she has been a Woman of integrity and intelligence. Ms. Newsome always has presented herself in a professional manner and has always addressed me and others with the uttermost of respect. Ms. Newsome outgoing personality and personal strengths would make her an excellent additional to anyone's staff. I have had the opportunity to work with Ms. Newsome and she has demonstrated flexibility in working outside of her field of endeavor and doing an excellent job is a strong indicator of how well she will do in her chosen field of endeavor. Ms. Newsome demonstrated a willingness to perform any task assigned to her promptly and correctly with little supervision. Ms. Newsome is a very pleasant person to associate with, works as a team player, and would truly be an ASSET to your organization because she is the best one for the job.

Thank you,

Lisa J. Washington

Lisa J. Washington, MS, LMFT
Coordinator

Vogel Newsome

Staffers
Promoting a Better Workplace
362-1010

Test Results from 11-20-02

Alphanumeric
8844 kph / 2% error rate

Typing
60 wpm / 1% error rate

Word 97
100 overall (100 on basic, intermediate & advanced)

Excel 97
100 overall (100 on basic, intermediate & advanced)

Jana Hedglin
362-1010
Staffing Coordinator

EXHIBIT "3"

THAD COCHRAN
MISSISSIPPI

United States Senate

WASHINGTON, DC 20510–2402

COMMITTEE ON
APPROPRIATIONS
CHAIRMAN

COMMITTEE ON
AGRICULTURE, NUTRITION,
AND FORESTRY

COMMITTEE ON
RULES AND
ADMINISTRATION

June 1, 2006

Ms. Denise Newsome
Post Office Box 31265
Jackson, Mississippi 39286

Dear Ms. Newsome:

Thank you very much for your recent letter. I appreciate hearing from you.

This appears to be a private, legal matter. However, in an effort to be of assistance, I have contacted the proper Office of the Attorney General officials in your behalf. As soon as I receive a report from them, I will get back in touch with you.

Sincerely,

THAD COCHRAN
United States Senator

TC/kc

EXHIBIT "2"

Common Dreams
progressive newswire
Latest News from America's Progressive Community
www.commondreams.org

FOR IMMEDIATE RELEASE
October 8, 2007
3:00 PM

CONTACT: Corporate Crime Reporter
202.737.1680
russell@nationalpress.com

Louisiana Most Corrupt State in the Nation, Mississippi Second, Illinois Sixth, New Jersey Ninth

October 8– Louisiana is the most corrupt state in the nation.

That's according to an analysis of government data released today by Corporate Crime Reporter.

Louisiana (1), Mississippi (2), Kentucky (3), Alabama (4) and Ohio (5) are the top five most corrupt states in the country, according to the analysis.

Rounding out the top ten are Illinois (6), Pennsylvania (7), Florida (8), New Jersey (9), and New York (10).

"If you type the word 'corruption' into Google News, the vast majority of news stories that come up are from overseas," said Russell Mokhiber, editor of Corporate Crime Reporter, a print weekly legal newsletter based in Washington, D.C. "But public corruption is booming right here in the USA."

"There have been more than 20,000 public officials and private citizens convicted of public corruption over the past two decades," Mokhiber said. "That's an average of 1,000 a year for the last twenty years."

Corporate Crime Reporter looked at the 35 most populous states in the nation. (The fifteen states with population of under two million were not included in the analysis.)

The ranking is based on data from the Justice Department's Public Integrity Section's 2006 report – which was made public just last week.

The 2006 Justice Department report contains a compilation of all federal corruption convictions by state over the past decade.

"We added up the total convictions for each state from 1997 to 2006," Mokhiber said. "We then calculated a corruption rate for each state, which we defined as the total number of public corruption convictions from 1997 to 2006 per 100,000 residents."

Here are the 35 most populous states ranked by their corruption rate:

Louisiana (1)(7.67), Mississippi (2)(6.66), Kentucky (3)(5.18), Alabama (4)(4.76), Ohio (5)(4.69), Illinois (6)(4.68), Pennsylvania (7)(4.55), Florida (8)(4.47), New Jersey (9)(4.32), New York (10) (3.95).

EXHIBIT "1"

6/14/2008

Tennessee (11)(3.68), Virginia (12)(3.64), Oklahoma (13)(2.96), Connecticut (14)(2.80), Missouri (15)(2.79), Arkansas (16)(2.74), Massachusetts (17)(2.66), Texas (18)(2.44), Maryland (19)(2.31), Michigan (20)(2.14).

Georgia (21)(2.13), Wisconsin (22)(2.09), California (23)(2.07), North Carolina (24)(1.96), Arizona (25)(1.88), Indiana (26)(1.85), South Carolina (27)(1.74), Nevada (28) (1.72), Colorado (29)(1.56), Washington (30)(1.52).

Utah (31)(1.4117), Kansas (32)(1.4109), Minnesota (33)(1.24), Iowa (34)(0.91), Oregon (35)(0.68).

Mokhiber warned that the study has its limitations.

"The Justice Department is reporting only public corruption convictions that result from a federal prosecution," Mokhiber said. "Convictions that result from a prosecution pursued by state district attorneys or attorneys general, for example, are not included in the Justice Department statistics. But the vast majority of public corruption prosecutions – perhaps as many as 80 percent – are brought by federal officials."

"Also, public officials in any given state can be corrupt to the core, and if a federal prosecutor doesn't have the resources or the sheer political will to bring the case and win a conviction, the public corruption will not be reflected in the Justice Department's data set," Mokhiber said.

Mokhiber said that in the most corrupt states, corruption is undermining public trust in politicians and government.

He cited a Monmouth University/Gannett New Jersey poll released last week which found that New Jersey residents are increasingly suspicious of their politicians.

The poll found 60 percent of residents say there is "a lot" of corruption in the state, up from 34 percent four years ago.

The poll also found that New Jerseyans think 60 percent of legislators are willing to sell out to lobbyists, up from 52 percent four years ago.

Mokhiber said he thought it was a good sign that citizens groups, like the Better Government Association (BGA) of Chicago, were organizing around the issue of public corruption – even giving awards to corruption fighters.

Later this month, for example, BGA will present its annual Civic Achievement Award jointly to the U.S. Attorney's office in Chicago and the Chicago Division of the Federal Bureau of Investigation for rooting out corruption in northern Illinois.

Keynote speaker at the October 25, 2007 event?

U.S. Attorney Patrick Fitzgerald.

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