

UNITED STATES DISTRICT COURT

for the

Eastern District of Arkansas

King's Ranch of Jonesboro, Inc.

Plaintiff

v.

City of Jonesboro, Arkansas

Defendant

Civil Action No. 3:10cv00096-JLH

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

City of Jonesboro, Arkansas
c/o Phillip Crego, City Attorney
410 W. Washington Avenue
Jonesboro, AR 72401

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Abigail A. Southerland
American Center for Law and Justice
5214 Maryland Way, Suite 402
Brentwood, TN 37027

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

JAMES W. McCORMACK
CLERK OF COURT

Date: 4/26/10

Jean Hurman
Signature of Clerk or Deputy Clerk

Received
5-10-10

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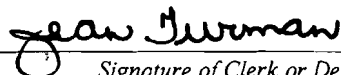
Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

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JAMES W. McCORMACK
CLERK OF COURT

Date: 4/26/10


Signature of Clerk or Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

APR 20 2010

JAMES W. McCORMACK, CLERK
By: Sean Swaman
DEP. CLERK

KING'S RANCH OF JONESBORO,
INCORPORATED

Plaintiff,

vs.

CITY OF JONESBORO, ARKANSAS

Defendant.

Case No. 3:10cv00096-JLH

JURY DEMAND

This case assigned to District Judge Holmes
and to Magistrate Judge Kearney

VERIFIED COMPLAINT

Comes now the Plaintiff, KING'S RANCH OF JONESBORO, INC., and files this
Complaint and would state as follows:

NATURE OF ACTION

1. King's Ranch of Jonesboro, Inc. is a Christian non-profit corporation which serves to provide abused, neglected and/or abandoned children with a Christian home. Plaintiff brings this action for declaratory relief and also seeks compensatory damages based on the Defendant's deliberate and purposeful deprivation of the Plaintiff's rights under the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*

JURISDICTION AND VENUE

2. This Court has jurisdiction over all federal claims in the Complaint arising under the United States Constitution pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) and (a)(4), and 42 U.S.C. § 3601 *et seq.*, which confers original jurisdiction on United States Courts in suits to

redress the deprivation of rights, privileges and immunities, as stated herein. This Court has jurisdiction over the request for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

3. Venue lies in this District pursuant to 28 U.S.C. § 1391. The Defendant and the Plaintiff are located in this District. All events giving rise to this action occurred in this District.

PARTIES

4. Plaintiff, KING'S RANCH OF JONESBORO, INC., ("King's Ranch") is an Arkansas not-for-profit corporation, with IRC Section 501(c)(3) recognition and operates to provide homes to children who are victims of abuse, neglect and/or abandonment and is located at 2816 Day Drive, Jonesboro, Craighead County, Arkansas.

5. Defendant, CITY OF JONESBORO, is a municipal corporation, incorporated, legal subdivision of the State of Arkansas, created and existing by virtue of the Constitution and laws of the State of Arkansas, and is empowered by the State to act through its governing body, its officials, employees, and official bodies. The Defendant is a recipient of federal funds and is therefore subject to the federal statutes and regulations cited herein which prohibit discrimination by such recipients on the basis of a handicap.

STATEMENT OF FACTS

6. King's Ranch of Jonesboro seeks to provide homes to children who are victims of abuse, neglect and/or abandonment.

7. Many of the recipients of King's Ranch's program suffer from mental and/or behavioral disabilities, most often Reactive Attachment Disorder ("RAD"), and are disabled individuals protected under the Fair Housing Act.

8. The founders of King's Ranch, Eddie and Lee Cooper, created the corporation in response to a great need for additional homes for children in the community. King's Ranch seeks to provide a Christ-centered family environment to nurture abused and/or neglected children by providing a loving and consistent home environment and individual counseling as needed to each child.

9. In February 2008, King's Ranch purchased 10.57 acres located at 2816 Day Drive, Jonesboro, Arkansas ("the Property") in order to fulfill its mission and provide a stable home with full-time houseparents for up to eight abused, neglected and/or abandoned children.

10. The Property is located in Jonesboro's R-1 residential zoning district and contains a 4,900 square foot brick home.

11. Pursuant to the City of Jonesboro's Zoning Resolution, a group of more than five unrelated persons living together in a single family home must obtain a conditional use permit to reside in the city's R-1 district.

12. Specifically, under the City of Jonesboro's Zoning Resolution, a group of more than five unrelated persons living together in a single family home does not qualify as a "family" and instead is classified as a "group residential."

13. Chapter 14.04 of Defendant's zoning resolution defines "family" as "[o]ne or more persons living together and subsisting in common as a single, non-profit housekeeping unit utilizing only one kitchen."

14. The code defines "group residential" as "[t]he use of a site for occupancy by groups of more than five (5) persons, not defined as a family. Typical uses included fraternity or sorority houses, dormitories, residence halls, and boarding or lodging houses."

15. Upon purchasing the Property, Plaintiff began the process to obtain a conditional use permit prior to housing up to eight (8) unrelated children.

16. In January 2008, pursuant to the City of Jonesboro's zoning resolution, King's Ranch submitted an application for a conditional use permit to operate as a "group residential" to house up to eight children who, upon admission to King's Ranch, would be between the ages of six and twelve.

17. During the Metropolitan Area Planning Commission ("MAPC") meetings in February and March 2008, Plaintiff's application was denied.

18. Following the MAPC's and City Council's denial of a conditional use permit, King's Ranch exhausted the appeals process by filing suit in the Circuit Court of Craighead County, Arkansas, Western District, Case No. CV-2008-0420, alleging that MAPC and the City Council's denial of the permit was arbitrary and capricious.

19. In March 2009, Plaintiff amended its complaint to include several federal claims under the Fair Housing Act, Americans With Disabilities Act, and the Religious Land Use and Institutionalized Persons Act.

20. Following Plaintiff's unsuccessful appeal to the Circuit Court of Craighead County, Plaintiff sent a letter dated July 13, 2009 to the City of Jonesboro, specifically to Mayor Perrin, members of the MAPC, and the city's attorney, Phillip Crego, making an official request that the City provide a reasonable accommodation pursuant to the FHA by waiving its definition of "family" as it applied to Plaintiff's proposed use to allow two houseparents and up to eight (8) children to live as a single family unit.

21. On August 7, 2009, Plaintiff sent another letter to Defendant in an attempt to explain in more detail that Plaintiff's recipients suffer from mental and/or behavioral disabilities

and thus are entitled to a reasonable accommodation under the Fair Housing Act to ensure an equal opportunity to use and enjoy a dwelling.

22. Despite numerous attempts by Plaintiff to contact and meet with Defendant regarding its request for a reasonable accommodation to the zoning resolution defining family to exclude more than 5 unrelated individuals, the City ignored Plaintiff's request for several months.

23. On February 2, 2010, King's Ranch was notified by the city's attorney, Burt Newell, that it would not waive the definition of "family" in the single family home located on Day Drive.

24. In the city's letter refusing to waive the definition of "family" to allow King's Ranch to house up to eight unrelated children, the city further suggested that it would be granting a reasonable accommodation by allowing King's Ranch to comply with Chapter 14.04 of the ordinance as it is written and house up to five (5) unrelated individuals.

25. As a consequence of the Defendant's unlawful actions, Plaintiff and its recipients have been denied housing on the basis of their handicap.

26. As a consequence of the Defendant's unlawful actions, the Plaintiff has suffered and continues to suffer irreparable harm as well as economic damages.

COUNT I
Fair Housing Act
(42 U.S.C. § 3604(f)(1) and (f)(2))

27. Paragraphs 1 through 26 are incorporated by reference as if set forth fully herein.

28. In 1988, Congress amended the Fair Housing Act, 42 U.S.C. §3601, *et seq.* to extend the guarantee of fair housing to individuals with disabilities and prohibited “familial status” discrimination.

29. Under the Fair Housing Act, 42 U.S.C. §3604(h), the term “handicap” or disability includes “(1) a physical or mental impairment which substantially limits one or more of such person’s major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment.”

30. Plaintiff constitutes a “person with a handicap” under the Fair Housing Act, 42 U.S.C. § 3602(d) and (h) and has suffered damages, economic loss and loss of civil rights as a result of Defendant’s discriminatory conduct.

31. The Plaintiff’s planned use of the Property constitutes a “dwelling” within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(b).

32. The Defendant violated Plaintiff’s rights under the Fair Housing Act, 42 U.S.C. § 3601, *et seq.*, by failing to make reasonable accommodation in its zoning code to afford the Plaintiff an equal opportunity to use and enjoy the Property.

33. The effect of Defendant’s actions is to deny housing to those with mental and/or behavioral disabilities.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

(a) A declaration that the Defendant’s action in denying the Plaintiff reasonable accommodations is illegal and unconstitutional as violating the Fair Housing Act;

(b) Equitable relief under the Fair Housing Act;

(c) That Plaintiff have and recover compensatory damages in the amount of \$300,000; together with any special damages arising out of the Defendant's conduct as described in the Complaint;

(d) That Plaintiff have and recover nominal damages;

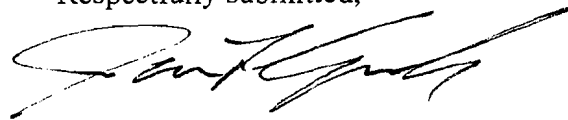
(e) That Plaintiff have and recover attorney fees and costs as provided by federal statute;

(f) Such other and further relief as this Court may deem just and appropriate.

DEMAND FOR JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands trial by jury in this action of all issues so triable.

Respectfully submitted,



/s/ James Gramling

James F. Gramling

Marshall & Owens

P.O. Box 4034

500 West Washington

Jonesboro, Arkansas 72403

(870) 932-8137

jimgramling@marshallowens.com

Arkansas Bar No. 97237

Local Counsel for Plaintiff

/s/ Larry L. Crain

Larry L. Crain

Attorney for Plaintiff

AMERICAN CENTER FOR LAW AND JUSTICE

5214 Maryland Way, Suite 402

Brentwood, TN 37027

Telephone: (615) 376-2600

Fax: (615) 345-6009

lcrain@brentwoodlaw.com

TN Bar ID No. 9040

Attorney for Plaintiff

/s/ Abigail Southerland

Abigail Southerland

Attorney for Plaintiff

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Brentwood, TN 37027

Telephone: (615) 376-2600

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asoutherland@aclj.com

TN Bar ID No. 26608

Attorney for Plaintiff

/s/ Wesley Southerland

Wesley Southerland

Attorney for Plaintiff

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Brentwood, TN 37027

Telephone: (615) 376-2600

Fax: (615) 345-6009

wsoutherland@brentwoodlaw.com

TN Bar ID No. 26609

Attorney for Plaintiff

/s/ Carly Gammill

Carly F. Gammill

Attorney for Plaintiff

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Brentwood, TN 37027

Telephone: (615) 376-2600

Fax: (615) 345-6009

cammill@aclj-dc.org


TN Bar ID No. 28217

Attorney for Plaintiff

VERIFICATION

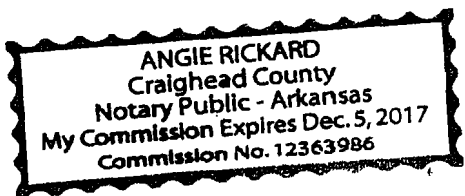
STATE OF ARKANSAS)
COUNTY OF CRAIGHEAD)


I, Eddie Cooper, being duly sworn, do hereby make oath that the information contained in the foregoing Complaint is true and correct to the best of my knowledge, information and belief.



Eddie Cooper
Co-founder King's Ranch of Jonesboro, Inc.

Sworn to and subscribed before me this 30th day of March, 2010.





NOTARY PUBLIC
My commission expires: 12-5-17

VERIFICATION

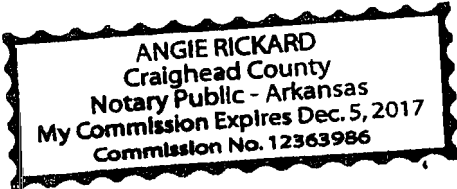
STATE OF ARKANSAS)
COUNTY OF CRAIGHEAD)

I, Lee Cooper, being duly sworn, do hereby make oath that the information contained in the foregoing Complaint is true and correct to the best of my knowledge, information and belief.

Lee Cooper

Lee Cooper
Co-founder King's Ranch of Jonesboro, Inc.

Sworn to and subscribed before me this 30th day of March, 2010.



Angie Rickard

NOTARY PUBLIC
My commission expires: 12-5-17

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS**

KING'S RANCH OF JONESBORO, INC.

PLAINTIFF

VS.

NO. 3:10CV00096 - JLH

**CITY OF JONESBORO,
ARKANSAS**

DEFENDANT

DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT

Comes the Defendant, City of Jonesboro, Arkansas, by and through counsel, C. Burt Newell and Ralph C. Ohm, provide the following Answer to Plaintiff's Verified Complaint filed on April 26, 2010:

1. Defendant denies the allegations contained in paragraph 1 of Plaintiff's Complaint.
2. Defendant denies the allegations contained in paragraph 2 of Plaintiff's Complaint and states affirmatively that jurisdiction of this cause of action is with the Arkansas Supreme Court, Case No. CA 09-01311, pursuant to the Arkansas Rules of Appellate Procedure and the Arkansas Rules of Civil Procedure.
3. Defendant denies the allegations contained in paragraph 3 of Plaintiff's Complaint, but states affirmatively that if jurisdiction were proper as alleged by the Plaintiff, then venue would be proper in this Court as well.
4. Defendant denies the allegations contained in paragraph 4 of Plaintiff's Complaint.
5. Defendant denies the allegations contained in paragraphs 5 and 6 of Plaintiff's

Complaint.

6. Defendant denies the allegations contained in paragraphs 7, 8, and 9 of Plaintiff's

Complaint.

7. Defendant admit the allegations contained in paragraphs 10, 11, and 12 of

Plaintiff's Complaint.

8. Defendant denies the allegations contained in paragraph 13 of Plaintiff's

Complaint and states that Chapter 14.04 of the City of Jonesboro's zoning resolution speaks for itself.

9. Defendant denies the allegations contained in paragraph 14 of Plaintiff's

Complaint and states that Chapter 14.04 of the City of Jonesboro's zoning resolution speaks for itself.

10. Defendant admits the allegations contained in paragraphs 15, 16, 17, 18 and 19 of Plaintiff's Complaint.

11. Defendant denies the allegations contained in paragraphs 20, 21, 22, 23, 24, 25, 26, and 27 of Plaintiff's Complaint.

12. Defendant denies the allegations contained in paragraph 28 of Plaintiff's Complaint and states that the Fair Housing Act 42 U.S.C. § 3601 *et seq.* speaks for itself.

13. Defendant denies the allegations contained in paragraph 29 of Plaintiff's Complaint and states that the Fair Housing Act 42 U.S.C. § 3604(h) speaks for itself.

14. Defendant denies the allegations contained in paragraph 30 of Plaintiff's Complaint and states that the Fair Housing Act 42 U.S.C. § 3602(d) and (h) speaks for themselves.

15. Defendant denies the allegations contained in paragraph 31 of Plaintiff Complaint and states that the Fair Housing Act 42 U.S.C. § 3602(b) speaks for itself.

16. Defendant denies the allegations contained in paragraphs 32 and 33 of Plaintiff's Complaint.

17. Those allegations contained in Plaintiff's Complaint that have not been specifically admitted by this Answer are hereby denied.

18. Defendant affirmatively asserts that Plaintiff's Complaint fails to state a cause of action upon which relief can be granted.

19. This action should be dismissed as the case and allegations contained therein is currently on appeal with the Arkansas Supreme Court in Case No. CA 09-01311.

20. Defendants affirmatively assert that the decision made by the City of Jonesboro's Council are legal, proper, and supported by legitimate governmental interests.

21. To the extent that any of the following affirmative defenses may apply, Defendant asserts the following affirmative defenses:

- A. Statute of Limitation;
- B. Improper Venue;
- C. Insufficiency of Service;
- D. Estoppel;
- E. Laches;
- F. Unclean Hands;
- G. Statute of Frauds;
- H. Contributory Negligence; and,

I. Sovereign Immunity.

22. Defendant specifically reserves the right to plead further in this case as evidence and discovery is developed.

WHEREFORE, the Defendant, City of Jonesboro, Arkansas, by and through counsel, C. Burt Newell and Ralph C. Ohm, having fully answered the Plaintiff's Complaint, respectfully prays that the Plaintiff's Complaint be denied and dismissed in its entirety, that Plaintiff's take nothing by way thereof.

Respectfully submitted,

By: /s/ C. Burt Newell

**C. Burt Newell, Bar No. 82118
Attorney for Defendant
P.O. Box 1620
Hot Springs, AR 71902-1620
(501) 321-2222
Fax (501) 624-0533
aperma@hotspringlaw.net**

**Ralph C. Ohm, Bar No. 82119
Attorney for Defendant
P.O. Box 1558
Hot Springs, AR 71902-1558
(501) 624-7555
(501) 624-7575
aperma@hotspringlaw.net**

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of May, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

James F. Gramling, Jr.
Marshall & Owens
P.O. Box 4034
Jonesboro, AR 72403

Larry L. Crain
Abigail Southerland
Wesley Southerland
Carly F. Gammill
AMERICAN CENTER FOR LAW AND
JUSTICE
5214 Maryland Way, Suite 402
Brentwood, TN 37027

By: /s/ C. Burt Newell
C. Burt Newell, Bar No. 82118

**Arkansas Public Entities Risk Management Association
(APERMA)
Legal Defense Group**

RALPH C. OHM - GENERAL COUNSEL

211 HOBSON AVENUE
POST OFFICE BOX 1558
HOT SPRINGS NATIONAL PARK, AR 71902-1558
TELEPHONE 501-624-7555
FACSIMILE 501-624-7575
aperma@hotspringslaw.net

C. BURT NEWELL
(501) 321-2222

NICK R. WINDLE
(501) 624-7555

May 13, 2010

Mayor Harold Perrin
City of Jonesboro
P.O. Box 1845
Jonesboro, AR 72403-1845

Mr. Phillip Crego
Jonesboro City Attorney
410 W. Washington
Jonesboro, AR 72401

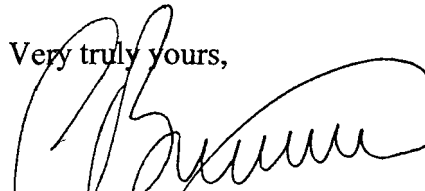
Re: King's Ranch of Jonesboro, Inc. v. City of Jonesboro, Arkansas
USDC Case No. 3:10CV00096-JLH

Dear Mayor Perrin and Mr. Crego:

Please find enclosed a copy of the Initial Scheduling Order setting the jury trial sometime during **week of February 7, 2011, beginning at 9:15 a.m. in Jonesboro, Arkansas**. Please mark your calendar for the entire week since if we do go to trial it could beginning any day of the week of February 7, 2011.

Should you have any questions or would like to discuss this matter, please do not hesitate to contact me.

Very truly yours,



C. Burt Newell

CBN/mlr
Enc.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

KING'S RANCH OF JONESBORO, INC.

PLAINTIFF(S)

v.

CASE NO. 3:10CV00096 JLH

CITY OF JONESBORO, ARKANSAS

DEFENDANT(S)

INITIAL SCHEDULING ORDER

An appearance was entered by defendant(s) on MAY 12, 2010.

IT IS HEREBY ORDERED that the following deadlines and proposals are in effect:

1. **RULE 26(f) CONFERENCE DEADLINE:** JULY 20, 2010

The parties are jointly responsible for holding their Rule 26(f) conference on or before the date specified.

2. **RULE 26(f) REPORT DUE DATE:** AUGUST 3, 2010

Consult FRCP 26(f) and Local Rule 26.1 for information to be included in the Rule 26(f) Report. The Report should be filed with the Clerk of the Court.

3. **PROPOSED TRIAL DATE:** FEBRUARY 7, 2011

The case will be scheduled for JURY TRIAL before Judge J. Leon Holmes commencing at 9:15 a.m. sometime during the week as set for above in JONESBORO, ARKANSAS.

4. **RULE 16(b) CONFERENCE:** (Scheduled if needed)

A telephone conference will be scheduled within one week of the filing of the Rule 26(f) Report, if necessary as determined by the Court, to resolve any conflicts among the parties with the proposed trial date and deadlines, mandatory disclosures, etc. Attached is a proposed final scheduling order with proposed deadlines for the parties consideration during the Rule 26(f) conference. Unless the parties object, the proposed scheduling order will become the Court's Final Scheduling Order and will be issued without a conference.

Dated May 13, 2010

AT THE DIRECTION OF THE COURT
JAMES W. McCORMACK, CLERK

By /s/ Cory Wilkins
Courtroom Deputy

Phyllis Vaccari

From: Scott McGlasson [Scott.McGlasson@publicans.com]
Sent: Friday, May 14, 2010 5:19 PM
To: Scott Roper; Joe Monroe; Phyllis Vaccari
Cc: Mike Brown; John Wilson
Subject: Collection project update --- Mailing next week

Scott / Joe / Phillip / and others -

A short update...

Joe was able to submit the initial referral file to us recently. We have taken a few "extra days" to review, massage, and download the account records into our system this first time around. From all indications, the account data has downloaded into our system without major issues. Our next step is to "dump" the account data into our collection letter document(s). Unless there is some unforeseen situation, we anticipate completing the letter generation / production step and dropping the letters in the mail approximately mid-next week. Once we have completed the letter production, I can provide to you some additional information with regard to the number of letters that will be mailed, etc. It appears we received approximately \$1.3 million in total account referrals - if I remember correctly, this was only accounts prior to 2008 (or some date thereabout - so there does remain a relatively significant sum due on cases from that date forward....but we can address that issue at a later time once we get up and rolling here).

As the collection notices go out, you may experience some additional interest and incoming traffic from defendants who owe sums. I believe you advised that if a defendant shows up with cash, money order or cashiers check that you will go ahead and accept the payment. Please do report those payments to us so that we do not continue our collection efforts against someone who has paid. (An email to mike.brown@publicans.com or to john.wilson@publicans.com will be sufficient notice). If the event a defendant contacts the court by phone with questions, please feel free to refer that phone contact directly to our office. Defendants can contact us at 877-251-1658.

Finally, as we receive dispute or requests for information on accounts that we are not able to provide adequate response to the defendant from the information we have been provided, I believe that we are to communicate directly with either Joe Monroe and/or Mary Ann Mathis. Is there a phone number and/or email that you prefer for us to contact for these matters? Our call center manager, John Wilson, is highly competent and very considerate of your time, etc.....so communications will be efficient. Further, John (and his crew) will quickly learn your preferences in handling these matters.

As a final note....

You may wish to communicate to all of your department heads, staff, and elected officials that collection efforts will be commencing.....and that if they receive a communication from family, friends, neighbors, or constituents relating to collection of delinquent warrant accounts, they will not be blind-sided and will know exactly how to appropriately respond.

Remember that I am always personally available for any question, issue or concern you may have. Feel free to contact me at any time.

Scott McGlasson
Linebarger Goggan Blair & Sampson, LLP

TO: Mayor/Council
in re: collection of
old accounts/district court
I am providing
this to you "FYI"
As you may recall,
the council authorized
this company to collect
old fines. As indicated
they will be sending out
1