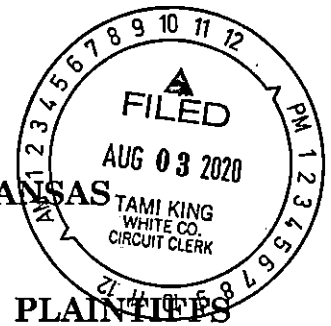


IN THE CIRCUIT COURT OF WHITE COUNTY, ARKANSAS
FIRST DIVISION



NIKITA LEE MAHONEY, *et al.*

PLAINTIFFS

v.

NO. 73CV-18-874

MARK DERRICK, in his official
Capacity as District Judge for the
23rd Judicial District of the State of
Arkansas

DEFENDANT

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Comes the Defendant, Mark Derrick, in his official capacity as district judge for the 23rd judicial district of the State of Arkansas, by and through his attorneys, Arkansas Attorney General Leslie Rutledge, and Senior Assistant Attorney General William C. Bird and Assistant Attorney General Vincent P. France, and for his Motion for Summary Judgment, does state:

1. Plaintiffs filed this Complaint on August 9, 2018, seeking prospective declaratory relief against District Court Judge Mark Derrick.
2. Judge Derrick moves this Court for summary judgment in his favor as to Plaintiffs' claims, in their entirety, for the following reasons:
 - a. absolute judicial immunity bars relief because Plaintiffs seek declaratory relief which is retrospective in nature;
 - b. Plaintiffs' claims constitute impermissible collateral attacks and are barred by the *Heck* doctrine;
 - c. to the extent Plaintiffs bring claims for prospective declaratory relief, Plaintiffs lack standing to pursue such claims; and

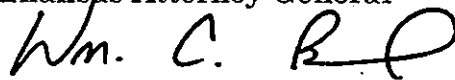
- d. Judge Derrick is entitled to summary judgment on Counts V, VI, and VII because Ark. Code Ann. § 16-13-708 does not give a district court judge authority to suspend a driver's license.
3. A Brief in Support is contemporaneously filed with this Motion.
4. For the reasons set forth herein, Plaintiffs' claims against Judge Derrick should be dismissed in their entirety.

WHEREFORE, Defendant Judge Mark Derrick prays this Court grant his Motion for Summary Judgment, enter an order dismissing, with prejudice, Plaintiffs' claims in their entirety, and for all other just and proper relief to which they are entitled.

Respectfully submitted,

LESLIE RUTLEDGE

Arkansas Attorney General



William C. Bird III (AR 2005149)

Senior Assistant Attorney General

Vincent P. France (AR 2010063)

Assistant Attorney General

Arkansas Attorney General's Office

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vincent.france@arkansasag.gov

Attorneys for Defendant

CERTIFICATE OF SERVICE

I, William C. Bird III, hereby-certify that on this 31ST day of July, 2020, I submitted the foregoing document and attachment referenced therein by electronic mail and regular U.S. Mail to the following:

Steven Shults
Shults Law Firm, LLP
200 West Capitol Avenue, Suite 1600
Little Rock, Arkansas 72201-3621
sshults@shultslaw.com

A handwritten signature in black ink that reads "Wm. C. Bird III". The signature is written in a cursive style with a large, stylized "B" and "I".

William C. Bird III

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

JUN 30 2017

JAMES W. MCCORMACK, CLERK
By: [Signature]
DEP CLERK

THE JUSTICE NETWORK, INC.

PLAINTIFF,

vs.

Civil Action Number: 3:17 WJN-DM

CRAIGHEAD COUNTY, JUDGE DAVID
BOLING, in his individual and official capacity,
JUDGE TOMMY FOWLER, in his individual
and official capacity, CITY OF BAY, CITY OF BONO,
CITY OF BROOKLAND, CITY OF CARAWAY,
CITY OF CASH, CITY OF EGYPT, CITY OF
JONESBORO, LAKE CITY, and CITY OF MONETTE,

DEFENDANTS.

**PLAINTIFF'S COMPLAINT FOR VIOLATION OF CIVIL RIGHTS AND STATE
LAW; FOR DECLARATORY RELIEF AND INJUNCTIVE RELIEF AND DAMAGES
(Jury Trial Demanded)**

Plaintiff, acting by and through its undersigned attorneys, brings this Complaint against Defendants, and states as follows:

INTRODUCTION

1. The Justice Network, Inc. ("The Justice Network") has been providing probation services to criminal defendants in Craighead County for over 20 years. Each probation client enters into a contract with The Justice Network, agreeing to pay probation fees in exchange for services provided, such as drug screenings and classes. The Justice Network's Jonesboro branch employed 12 full time employees, all residents of Craighead County. As a result of the policies and conduct of the Defendants, The Justice Network has ceased all operations in Craighead County, and has had been forced to terminate its 12 employees.

This case assigned to District Judge Marshall
and to Magistrate Judge Volpe

EXHIBIT A

2. Starting in 2016, Judges David Boling and Tommy Fowler, newly elected District Court Judges in Craighead County, instituted an “Amnesty Program,” which forgives fees owed by the probation clients to The Justice Network.

3. By the conduct and the practices implemented in their courts, Boling and Fowler have unilaterally decreed that The Justice Network is not entitled to fees owed under the contracts between each probation client and The Justice Network.

4. As a direct result of Fowler’s and Boling’s interference in the contractual relationship between The Justice Network and the probation clients, The Justice Network has suffered significant economic loss, and will continue to sustain additional economic loss in the future, should the unlawful “Amnesty Program” continue.

5. This is a civil rights action brought pursuant to 42 U.S.C. § 1983 by The Justice Network, Inc. for violations of the Constitutional rights of The Justice Network under The Contracts Clause (Article I, Section 10 of the United States Constitution) and the Takings Clause (Fifth Amendment to the United States Constitution).

6. The Contracts Clause and Takings Clause are made applicable to the States by virtue of the 14th Amendment.

7. This action also alleges violations of Article 2, Section 22 of the Constitution of the State of Arkansas (private property shall not be taken without just compensation).

8. This action seeks a declaratory judgment, finding that Defendants effectuated a custom and policy of annulling fees owed by probation clients to The Justice Network, in violation of the Article 1, Section 10 and the Fifth Amendment to the United States Constitution and Article 2, Section 17 as well as Article 2, Section 22 of the Constitution of the State of Arkansas.

9. This action also seeks injunctive relief enjoining Defendants from executing a custom and policy of annulling fees owed by probation clients to The Justice Network, in violation of the Article 1, Section 10 and the Fifth Amendment to the United States Constitution and Article 2, Section 17 as well as Article 2, Section 22 of the Constitution of the State of Arkansas.

JURISDICTION AND VENUE

10. This Complaint seeks damages pursuant to Title 42 U.S.C. §§ 1983 and 1988 for the violation of the civil and constitutional rights of The Justice Network and for violations of the laws of the State of Arkansas.

11. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343, which provides that the Federal District Court shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States.

12. This Court has supplemental jurisdiction over the state law claims presented herein pursuant to 28 U.S.C. §1367.

13. This action involves citizens of two different states and the amount in controversy exceeds Seventy Five Thousand Dollars (\$75,000.00). By virtue of the parties' citizenship and the amount in controversy, this Court has jurisdiction based upon diversity of citizenship pursuant to 28 U.S.C. § 1332.

14. The events and omissions giving rise to this civil action occurred within the Eastern District of Arkansas, Jonesboro Division; therefore, pursuant to 28 U.S.C. §1391(b)(1)-(2) and 28 U.S.C. §83(a)(5), the proper venue for this action is in the Jonesboro Division of the United States District Court of the Eastern District of Arkansas.

JURY TRIAL DEMANDED

15. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a jury trial of this action as is its right pursuant to Amendment VII to the Constitution of the United States of America.

PARTIES

16. Plaintiff, The Justice Network, with its principal office located at 2430 Poplar Avenue, 3rd Floor, Memphis, Tennessee 38112, is a corporation organized and existing under and by virtue of the laws of the State of Tennessee, and was incorporated in 1990.

17. Community Corrections Corporation, doing business as The Justice Network, is a corporation organized and existing under and by virtue of the laws of the State of Arkansas. Community Corrections Corporation was incorporated in 1992 under and by virtue of the laws of the State of Arkansas.

18. The Justice Network purchased a controlling interest in Community Corrections Corporation in December 1997. The Justice Network has operated Community Corrections Corporation, doing business as The Justice Network, since December 1997.

19. The County of Craighead is a public entity which is a political subdivision created and existing by virtue of the laws of the State of Arkansas.

20. The County of Craighead may be served with process of this Court by serving same upon Ed Hill, Craighead County's Chief Executive Officer at 511 Union Street, Suite 119, Jonesboro, Arkansas 74201, pursuant to Arkansas Rule of Civil Procedure, Rule 4(a)(7).

21. Defendant County of Craighead operates and manages the District Courts in Craighead County.

22. The Defendant, David Boling (hereinafter, "Boling"), is a District Judge in Craighead County District Court and has held that post at all relevant times material to this action. Judge Boling is a "person" pursuant to 42 U.S.C. § 1983, and is being sued in his individual capacity.

23. The Defendant, Tommy Fowler (hereinafter "Fowler"), is a District Judge in Craighead County District Court and has held that post at all relevant times material to this action. Judge Fowler is a "person" pursuant to 42 U.S.C. § 1983, and is being sued in his individual capacity.

24. The Defendant County of Craighead, at all relevant times, employed Boling and Fowler.

25. At all times relevant hereto and in all their actions described herein, defendants Boling and Fowler were acting under color of state law and pursuant to their authority as members of the judiciary.

26. In addition to serving as a District Judge in Craighead County, Defendant Boling is employed as a City Judge in a number of cities in Craighead County.

27. The cities where Boling serves as City Judge include: The City of Bay, The City of Bono, The City of Brookland, The City of Caraway, The City of Cash, The City of Egypt, The City of Jonesboro, Lake City and The City of Monette (hereinafter, "City Defendants").

28. In addition to serving as a District Judge in Craighead County, Defendant Fowler is employed as a City Judge in a number of cities in Craighead County.

29. The cities in which Fowler serves as a City Judge include: The City of Bay, The City of Bono, The City of Brookland, The City of Caraway, The City of Cash, The City of Egypt, The City of Jonesboro, Lake City and The City of Monette.

30. The City Defendants, at all relevant times, employed Boling and Fowler. At all times relevant hereto and in all their actions described herein, defendants Boling and Fowler were acting under color of state law and pursuant to their authority as members of the judiciary.

31. The City of Bay is a public entity which is a political subdivision created and existing by virtue of the laws of the State of Arkansas. Pursuant to Arkansas Rules of Civil Procedure, Rule 4(a)(7) and Arkansas Code Ann. 14-43-504(a), City of Bay may be served with process by serving Darrell Kirby, the City of Bay's Mayor and Chief Executive Officer, at 220 Elder Street, Bay, Arkansas 72411.

32. The City of Bono is a public entity which is a political subdivision created and existing by virtue of the laws of the State of Arkansas. Pursuant to Arkansas Rules of Civil Procedure, Rule 4(a)(7) and Arkansas Code Ann. 14-43-504(a), City of Bono may be served with process by serving Danny C. Shaw, City of Bono's Mayor and Chief Executive Officer at 241 East College Street, Bono, Arkansas 72416.

33. The City of Brookland is a public entity which is a political subdivision created and existing by virtue of the laws of the State of Arkansas. Pursuant to Arkansas Rules of Civil Procedure, Rule 4(a)(7) and Arkansas Code Ann. 14-43-504(a), City of Brookland may be served with process by serving Kenneth D. Jones, City of Brookland's Mayor and Chief Executive Officer at 613 Holman, Brookland, Arkansas 72417.

34. The City of Caraway is a public entity which is a political subdivision created and existing by virtue of the laws of the State of Arkansas. Pursuant to Arkansas Rules of Civil Procedure, Rule 4(a)(7) and Arkansas Code Ann. 14-43-504(a), City of Caraway may be served with process by serving Barry Riley, City of Caraway's Mayor and Chief Executive Officer at 102 East State Street, Caraway, Arkansas 72419.

35. The City of Cash is a public entity which is a political subdivision created and existing by virtue of the laws of the State of Arkansas. Pursuant to Arkansas Rules of Civil Procedure, Rule 4(a)(7) and Arkansas Code Ann. 14-43-504(a), City of Cash may be served with process by serving Michael Cureton, City of Cash's Mayor and Chief Executive Officer at 3669 Highway 18, Cash, Arkansas 72421.

36. The City of Egypt is a public entity which is a political subdivision created and existing by virtue of the laws of the State of Arkansas. Pursuant to Arkansas Rules of Civil Procedure, Rule 4(a)(7) and Arkansas Code Ann. 14-43-504(a), City of Egypt may be served with process by serving Jerry Cook, City of Egypt's Mayor and Chief Executive Officer at 11063 Highway 91, Egypt, Arkansas 72421.

37. The City of Jonesboro is a public entity which is a political subdivision created and existing by virtue of the laws of the State of Arkansas. Pursuant to Arkansas Rules of Civil Procedure, Rule 4(a)(7) and Arkansas Code Ann. 14-43-504(a), City of Jonesboro may be served with process by serving Harold Perrin, City of Jonesboro's Mayor and Chief Executive Officer at 300 South Church Street, Jonesboro, Arkansas 72401.

38. Lake City is a public entity which is a political subdivision created and existing by virtue of the laws of the State of Arkansas. Pursuant to Arkansas Rules of Civil Procedure, Rule 4(a)(7) and Arkansas Code Ann. 14-43-504(a), Lake City may be served with process by serving Jon Milligan, Lake City's Mayor and Chief Executive Officer at 406 Court Street, Lake City, Arkansas 72437.

39. The City of Monette is a public entity which is a political subdivision created and existing by virtue of the laws of the State of Arkansas. Pursuant to Arkansas Rules of Civil Procedure, Rule 4(a)(7) and Arkansas Code Ann. 14-43-504(a), City of Monette may be served

with process by serving Jerry Qualls, City of Monette's Mayor and Chief Executive Officer at 119 North Edmonds, Monette, Arkansas 72447.

EXHAUSTION OF PRE-LAWSUIT PROCEDURES

40. Some of the claims brought herein are brought pursuant to the laws of the State of Arkansas. As this action is brought against the County of Craighead as well as the City Defendants - and not the State of Arkansas - the Plaintiff is not required to exhaust its administrative remedies in the Arkansas Claims Commission, pursuant to Arkansas Code Annotated § 19-10-204 (a).

BACKGROUND

41. The Justice Network is a private probation company, and it offers services to probation clients in Craighead County. Services offered to the probation clients include: program and counseling coordination, public service work, random drug screening, curfew monitoring, or any other condition of probation ordered by the court.

42. The Justice Network also offers a variety of classes to its probation clients, including: life skills, parenting skills, anger management, alcohol safety school and drug offender school. Classes are taught by caring professionals, with certificates of completion awarded at the conclusion of each class.

43. Since 1997, The Justice Network has provided probation services to probation clients under the jurisdiction of the district and circuit courts of Craighead County.

44. Since 1997, the Justice Network has also provided probation services to probation clients under the jurisdiction of the courts in the City of Jonesboro, City of Bay, City of Brookland, Lake City, City of Caraway, City of Monette, City of Bono, City of Cash and City of Egypt ("City Courts").

45. From 1997 until February 3, 2017, all misdemeanor offenders who had been charged in Craighead County District Court or the City Courts, and who required probation services, were placed under the supervision of The Justice Network.

46. The Justice Network contracted individually with each probation client. The Probation Fee Agreement contains, *inter alia*, a \$35 monthly fee for probation services. The Public Service Fee Agreement includes, *inter alia*, a \$15 monthly fee for the supervision of public service work (a typical condition of probation). That fee structure has been in place since the early 2000's, without any increase. Copies of the Probation Fee Agreement and Public Service Fee Agreement are attached hereto as Exhibit "A."

47. In conjunction with the contract between The Justice Network and each probation client, the probation clients were directed, by way of court order, to pay the fees referred to in the above paragraph to The Justice Network.

48. The court order provides that probation clients are to pay all probation supervision fees to The Justice Network for each month of supervised probation. A copy of the "Order of Probation/Supervision" is attached hereto as Exhibit "B."

49. In the court order, a number of "Special Conditions" were typically included as part of the order of probation. Some of those "Special Conditions" include: attending Alcoholics Anonymous (AA) meetings, attending counseling (inpatient or outpatient), attending anger management class and/or performing public service work.

50. In the event the probation client failed to abide by the order of probation and did not complete the "Special Conditions" ordered by the court, The Justice Network would file an affidavit with the court indicating what condition or conditions were not completed.

51. The affidavit was then countersigned by the Craighead County prosecutor and the Judge.

52. The judge of the District Court would order that restitution be paid to The Justice Network for all outstanding fees owed to The Justice Network.

53. The same process was followed in the City Courts, including the court order directing fees to be paid to The Justice Network.

54. The collection of fees owed by the probation clients to The Justice Network is a ministerial act to which immunity does not attach.

55. For cases pending in the District Court, the District Court would collect the fees owed by the probation clients to The Justice Network and forward those funds to The Justice Network.

56. For cases pending in the City Courts, the City Court would collect the fees owed by the probation clients to The Justice Network and forward those funds to The Justice Network.

57. This system whereby the District Court and City Courts collected fees owed to The Justice Network and subsequently disbursed those fees to The Justice Network was in place for nearly twenty (20) years, from 1997 until 2016.

City of Jonesboro 2010 Report Finding that Private Sector Probation Services is More Cost Effective than Municipal Control Over Probation Services

58. The City of Jonesboro performed a comprehensive cost benefit analysis studying the advantages and disadvantages of utilizing private sector probation service providers, such as The Justice Network. A report summarizing those findings was published in July 2010.

59. The report finds that the City of Jonesboro receives more economic benefit when using private sector probation services from The Justice Network than it would if it were to keep those services “in house.”

60. The report concluded that a Probation Department operated by the City of Jonesboro would not generate a profit.

61. In addition, the report indicates that it is economically advantageous for the City of Jonesboro to retain a private sector firm to provide probation services for the City of Jonesboro.

Judicial Elections in Craighead County Results in Ouster of The Justice Network

62. Elections for two District Court judicial seats in Craighead County took place in early 2016. The contest in Division 1 was between incumbent Keith Blackman and challenger David Boling.

63. In an interview with the Jonesboro Sun, published on February 14, 2016, Boling accused Blackman of “illegal conduct.”

64. Boling stated in the interview that the District Court’s relationship with a private, for-profit probation service provider (The Justice Network) was an example of Blackman “not following the law.”

65. Boling specifically stated that should he be elected, The Justice Network would not be used to provide probation services for defendants in his court.

66. Boling added that “What happens is that The Justice Network, in order for them to continue to feed, they have to have people in the system.”

67. The contest in Division 2 was between Tommy Fowler and Scott Wilhite.

68. Fowler was interviewed by the Jonesboro Sun on February 7, 2016. He indicated that he does “not support the privatization of probation services....the privatization of it in any aspect leads to the questionability of credibility and just a distrust.”

69. Probation, he added, is to punish and rehabilitate offenders, “it’s not a money-making arm of the government. If it’s privatized, that’s what’s left. It’s to make sure enough people are coming through to meet the bottom line.”

70. On March 4, 2016, Fowler told a Sun reporter that he is opposed to the idea of private probation services as “there will always be an ethical dilemma with such a system.”

71. These comments of both Boling and Fowler ignore the contractual relationship existing between the probation clients and The Justice Network.

72. Fowler and Boling won their respective elections on March 1, 2016. The Jonesboro Sun published an article on March 2, 2016, indicating that both judges planned to “sever ties” with The Justice Network after being sworn in.

73. That article went on to note that “discontinuing the use of the Justice Network by the District Court was a central part of the campaigns of Boling and Fowler.”

74. An article published in the Jonesboro Sun on March 4, 2016, concerning the victory of Judges Boling and Fowler, stated as follows:

Segments of the community, including some who write in the space at The Sun, have challenged the fairness and necessity of the Justice Network, a Memphis-based for-profit outfit that provides probation and other services to the County through Craighead County District Court. Whether people in the "system" were treated fairly and whether the County was doing a disservice to the community by using the for-profit business rather than taking the process "in-house" has moved like a snowball rolling down a long, slightly declining hill.

75. Following the election, Boling continued his verbal assault on The Justice Network. In an article published by the Sun on March 4, 2016, Boling stated, "It's a vicious cycle of a revolving door. Someone may be assessed the fines, they've paid off part of it. Their records may not be complete and they could potentially be brought back in front of the court."

76. In a television interview with KAIT8 on March 4, 2016, the chief concern Boling expressed was the absence of a contract between The Justice Network and Craighead County. Boling said, "You want a contract so you know the terms and conditions. What are my obligations? What are their obligations? There's a lot of money not to be able to go back and say, hey are they upholding their end of the bargain?"

77. Boling's emphasis on contract terms is inconsistent with his decision to nullify the contracts between The Justice Network and the probation clients.

78. The "Amnesty Program" instituted by Boling cancelled payments owed by hundreds of probation clients to The Justice Network. That conduct directly interfered with the contractual relationship that existed between The Justice Network and each probation client.

79. Contrary to the 2010 report, Boling advocated for all probation services in Craighead County to be brought "in house" in the March 4 article.

Judges Fowler and Boling Institute an "Amnesty Program" Forgiving Fees owed by Probation Clients to The Justice Network

80. Boling assumed the bench in July 2016, when he was appointed by the Governor of Arkansas to complete the unexpired term of the late Curt Huckaby.

81. In an article in the Jonesboro Sun, published on August 11, 2016, Boling stated that he dismissed the case of one defendant on probation and "purged" the remaining debt that had not been paid.

82. Some of the debt that was purged were court costs.

83. A portion of the “purged” debt was fees which were owed by the defendant to The Justice Network, pursuant to a contract signed by that defendant and The Justice Network.

84. The August 12, 2016 edition of The Sun continued its coverage on the new policies instituted by Boling and Fowler. The paper reported that Boling said that he would “consider nonpayment cases on a case-by-case basis.”

85. The article went on to note that “Boling and Fowler . . . don’t see how a private, for-profit business with a vested financial interest in keeping folks on its rosters, is a good service for the community.”

86. The Sun reported on December 7, 2016, that Fowler and Boling planned to implement an “Amnesty Program” in January and February 2017.

87. As part of that program, Fowler and Boling met with probation offenders who had outstanding fines that were due, to discuss payment options.

88. On January 26, 2017 the Sun reported that Fowler and Boling had introduced a “temporary amnesty program,” allowing offenders who were delinquent on their payments to reset their payment plan.

89. The fees owed to The Justice Network, contained in the Court Order annexed as Exhibit “A,” were summarily stricken from each Order by the judges.

90. The fees owed to The Justice Network were forgiven by Boling and Fowler as part of the “Amnesty Program.”

91. Fowler and Boling also instituted a program of “Jail Credit.”

92. Under that program, costs owed to the Court and fees owed to Plaintiff were forgiven in lieu of time served in prison.

93. Upon information and belief, many of the probation clients given "Jail Credit" were never incarcerated.

94. Fowler and Boling's conduct directly interfered with the contractual relationship formed between The Justice Network and each probation client.

95. Boling stated the following in an interview given to the Jonesboro Sun on January 26, 2017: "What I think is going to happen, what I expect is occurring, is that the money in fines and fees that were going to The Justice Network, which was a substantial amount of money, that money is not going to them. I anticipate, and what I think is occurring, is that it is going to the City and County fines that are owed." (emphasis added)

96. Boling and Fowler enacted a program setting forth an illegal policy which interferes with the lawfully formed contracts between The Justice Network and its clients.

97. The impact of the "Amnesty Program" was that it unlawfully declared that fees owed by probation clients under their contacts with The Justice Network were cancelled and nullified.

98. Defendants Boling and Fowler have inappropriately used their office and political influence to impose and establish a policy in the Craighead County District Court which interferes with the contractual relationship that exists between The Justice Network and Justice Network's probation clients.

99. Defendants Boling and Fowler have inappropriately used their office and political influence to impose and establish a policy in the City Courts located throughout Craighead County which interferes with the contractual relationship that exists between The Justice Network and Justice Network's probation clients.

100. The above-referenced policy enacted by Boling and Fowler was done maliciously and under the guise of the performance of Boling and Fowler's official duties.

101. The "Amnesty" declaration ratified a policy that nullified and abrogated the contractual duty owed by hundreds of probation clients to pay administrative fees owed to The Justice Network.

102. As a direct result of the above-referenced policy established by Fowler and Boling, The Justice Network has sustained significant economic damage, and continues to sustain economic damage.

103. The amount of fees rendered uncollectable due to the conduct of Fowler and Boling is in the hundreds of thousands, and continues to grow.

104. This economic loss, caused by the unlawful policy instituted by the Defendants, represents an unlawful governmental taking of a substantial property right.

105. Fowler and Boling have used their judicial office and powers to unlawfully impose a policy intended to punish The Justice Network by interfering with Plaintiff's contractual relationships.

106. Fowler and Boling have used their judicial office and powers to unlawfully take The Justice Network's substantial property rights without due process of law.

107. Defendants Fowler and Boling repeatedly provided the local press with incomplete and misleading information about Plaintiff, resulting in excess of thirty articles and editorials - all reflecting negatively on The Justice Network.

COUNT ONE

42 U.S.C. § 1983 (Violation of Contracts Clause)

108. Plaintiff re-alleges and incorporates by reference, as though fully contained herein, the allegations set forth above.

109. Article I, §10 of the United States Constitution provides that “[n]o State shall...pass any...Law impairing the Obligation of Contracts...”

110. The contracts entered into by and between The Justice Network and the probation clients constitute contractual obligations between parties.

111. Judges Boling and Fowler, through their policy of declaring an unauthorized and illegal “Amnesty” on fees owed to The Justice Network, have substantially impaired (and continue to substantially impair) The Justice Network’s contractual relationships with its probation clients.

112. The policy established by Judges Fowler and Boling materially alters an important term – namely, the amount of fees owed by each probation client to The Justice Network under that probation client’s contract.

113. The interference in contract on the part of Judges Fowler and Boling substantially impairs The Justice Network’s contractual rights under the agreements made between The Justice Network and the probation clients, in violation of Article I, § 10 of the United States Constitution.

114. The above conduct is actionable pursuant to 42 U.S.C. § 1983, which bars governmental actions impairing on contract rights.

115. The “Amnesty Program” program established by Boling and Fowler denies The Justice Network any notice or an opportunity to be heard or to consent to the purported modification of its contracts with the probation clients.

116. By denying Plaintiff its rights to be heard under the Due Process Clause of the Fourteenth Amendment, the judges, under color of state law, have acted unlawfully and denied plaintiff its rights under the Constitution and laws of the United States within the meaning of Section 1983 of Title 42.

117. A cause of action under 42 U.S.C. §1983 lies for impairment of contract under the Contracts Clause of the United States Constitution, as applied to the States under the 14th Amendment.

COUNT TWO

42 U.S.C. § 1983 (Violation of Takings Clause)

118. Plaintiff re-alleges and incorporates by reference, as though fully contained herein, the allegations set forth above.

119. The Fifth Amendment of the United States Constitution provides that “nor shall private property be taken for public use, without just compensation.”

120. This limitation on government powers has been imposed on the States through the 14th Amendment.

121. Moreover, valid contracts are property, whether the contracting parties are a corporation, an individual, a municipality or the United States.

122. Where property rights contained in contracts are taken without due process of law and without just compensation, damages are owed to the party whose contract was taken.

123. By cancelling all fees owed to The Justice Network, the Defendants willfully deprived Plaintiff of its rights under the contracts Plaintiff had entered into with the probation clients.

124. Said action was taken without notice and without any opportunity for a fair hearing, in violation of the United States Constitution.

125. The policies of Defendants in establishing the “Amnesty Program” and the above conduct of Defendants constitute an unlawful and unilateral taking.

126. The conduct of Defendants in annulling the fees owed to Plaintiff pursuant to contract is actionable pursuant to 42 U.S.C. § 1983, which bars governmental takings of private property, including contracts.

COUNT THREE

Violation of Property Rights (State Law Claim)

127. Plaintiff re-alleges and incorporates by reference, as though fully contained herein, the allegations set forth above.

128. A contract is an item of property under the laws of the State of Arkansas.

129. The policy enacted by Fowler and Boling violated Plaintiff's property rights.

130. Article 2, section 22 of the Arkansas State Constitution, entitled "Property Rights," provides that taking without just compensation is prohibited. "The right of property is before and higher than any constitutional sanction; and private property shall not be taken, appropriated or damaged for public use, without just compensation therefor."

131. By cancelling all fees owed to The Justice Network, the Defendants willfully deprived Plaintiff of its rights under the contracts Plaintiff had entered into with the probation clients.

132. Said action was taken without notice and without any opportunity for a fair hearing, in violation of the Constitution of the State of Arkansas.

133. The policies of Defendants in establishing the "Amnesty Program" and the above conduct of Defendants constitute an unlawful and unilateral taking.

134. The conduct of Defendants in annulling the fees owed to Plaintiff is actionable pursuant to Article 2, Section 22 of the Constitution of the State of Arkansas, which bars governmental takings of private property, including contracts.

COUNT FOUR

Tortious Interference with Contract

135. Plaintiff re-alleges and incorporates by reference, as though fully contained herein, the allegations set forth above.

136. Valid contracts were entered into between hundreds of probation clients and The Justice Network with respect to services provided to said probation clients.

137. Defendants were aware of the above-mentioned contracts between the probation clients and The Justice Network.

138. Defendants Fowler and Boling intentionally rendered those contracts meaningless when declaring an “Amnesty Program” which forgave fees owed by the probation clients to The Justice Network.

139. The “Amnesty Program” and the cancellation of fees owed to Plaintiff was how Fowler and Boling followed through on promises made on their respective campaign trails. Said campaign promises were motivated by the political aspirations of both Fowler and Boling.

140. Defendants’ policy in enacting the unlawful “Amnesty Program” and conduct in striking the fees owed to The Justice Network was without legitimate justification.

141. Plaintiff has and will incur actual damages through the actions of the Defendants in that fees owed to the Plaintiff were nullified and the contracts were made worthless by the policy of the Defendants.

142. As a direct result of Defendants interference with Plaintiff’s contracts, Plaintiff has incurred actual damages through the loss of the benefits of the contract.

143. The policies enacted by Defendants and the conduct of the Defendants was malicious, reckless, wanton, and/or accomplished with a conscious disregard of the rights of Plaintiff.

144. As a result, Plaintiff is entitled to an award of exemplary and punitive damages.

COUNT FIVE

Unjust Enrichment

145. Plaintiff re-alleges and incorporates by reference, as though fully contained herein, the allegations set forth above.

146. The Justice Network provided probation services to its probation clients.

147. Under the Order of Probation/Supervision, attached as Exhibit "B," The Justice Network was under court order to provide probation services to defendants in Craighead County and in the City Courts.

148. Had The Justice Network not provided those probation services, the Defendant County of Craighead and City Defendants would have had to either (1) pay another private probation provider for those services; or (2) institute an "in house" program to service probation clients.

149. The County of Craighead and the City Defendants received the benefit of The Justice Network providing probation services.

150. The Defendants have been unjustly enriched at the expense of Plaintiff.

151. The circumstances render Defendants' retention of the benefit inequitable unless the Defendants pay the Plaintiff the value of the benefit.

152. Contrary to all good faith and fair dealing, The County of Craighead has been unjustly enriched by receiving the benefits of the probation services provided by The Justice Network without reimbursing The Justice Network for those services.

153. Contrary to all good faith and fair dealing, the City Defendants have been unjustly enriched by receiving the benefits of the probation services provided by The Justice Network without reimbursing the Justice Network for those services.

COUNT SIX

Supervisory Liability and Ratification

(42 U.S.C. Section 1983)

(Against Defendant Craighead County and the City Defendants)

154. Plaintiff re-alleges and incorporates by reference, as though fully contained herein, the legations set forth above.

155. Defendant Craighead County and the City Defendants expressly and tacitly encouraged, ratified, and/or approved of the policy enacted by Fowler and Boling declaring that fees owed to the Plaintiff were forgiven.

156. Defendant Craighead County and the City Defendants knew that such conduct was unjustified and would result in violations of constitutional rights.

157. The customs, policies, and/or practices of Defendant Craighead County and City Defendants were a direct and proximate cause of the economic damages sustained by Plaintiff.

158. Defendant Craighead County and the City Defendants failed to adequately train and supervise their employees and/or agents to prevent the occurrence of the constitutional violations occurring in this incident.

159. Defendant Craighead County and the City Defendants also failed to promulgate appropriate policies or procedures or take other measures to prevent the establishment of the unconstitutional and illegal "Amnesty Program."

160. As a direct and proximate result of the aforementioned customs, policies and/or practices of the Defendant Craighead County and the City Defendants, the Plaintiff sustained economic loss and continues to suffer economic losses, as alleged herein.

COUNT SEVEN
Declaratory Judgment

161. Plaintiff re-alleges and incorporates by reference, as though fully contained herein, the allegations set forth above.

162. At all times relevant herein it was, and continues to be, the policy and custom of Defendants Fowler and Boling to interfere with the contracts between the probation clients of The Justice Network and The Justice Network.

163. Judge Boling told the Jonesboro Sun on January 26, 2017 that “the money in fines **and fees** that were going to The Justice Network, which was a substantial amount of money, that money is not going to them.”

164. The “Amnesty Program” established by Fowler and Boling, declaring that any fees owed by the probation clients have been forgiven, is an unlawful violation of the United States Constitution Article I, section 10 (Takings Clause), the Fifth Amendment (Contracts Clause) and the Constitution of the State of Arkansas.

165. The policy enacted by Fowler and Boling in declaring the “Amnesty Program” and annulling the fees owed to Plaintiff also constitutes tortious interference with contract.

166. Plaintiff is entitled to a declaratory judgment that Defendants Boling and Fowler effectuated a custom and policy nullifying contracts entered into by The Justice Network and its probation clients in violation of (1) Article 1, section 10 of the United States Constitution; (2) The Fifth Amendment to the United States Constitution; and (3) Article 2, section 22 of the Constitution of the State of Arkansas.

COUNT EIGHT
Injunctive Relief

167. Plaintiff re-alleges and incorporates by reference, as though fully contained herein, the allegations set forth above.

168. Defendants Fowler and Boling's "Amnesty Program" and subsequent cancellation of hundreds of thousands of dollars owed to The Justice Network, despite validly formed contracts between Plaintiff and the probation clients, violates the United States Constitution, as well as numerous state and federal laws, as described above.

169. The policy enacted by Fowler and Boling has caused, and continues to cause, irreparable injury.

170. Plaintiff has lost hundreds of thousands of dollars in now uncollectable fees, and will continue to lose significant sums of money should the policies enacted by Defendants continue.

171. Plaintiff is entitled to Injunctive Relief enjoining Defendants Fowler and Boling from executing a policy and custom cancelling fees rightfully owed to The Justice Network. Said policy is in violation of (1) Article 1, section 10 of the United States Constitution; (2) The Fifth Amendment to the United States Constitution; and (3) Article 2, section 22 of the Constitution of the State of Arkansas.

REQUEST FOR RELIEF

WHEREFORE, the Plaintiff demands judgment against the Defendants:

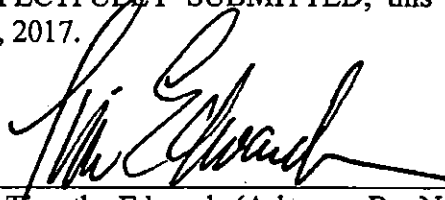
- a. A monetary judgment in favor of the Plaintiff and against the Defendants for actual or compensatory and presumed damages sustained by the Plaintiff, pursuant to 42 U.S.C. §1983, for violations of the civil and constitutional rights of The Justice Network arising

out of the unlawful policies established by the Defendants in declaring that fees owed to The Justice Network were forgiven, and for violations of duties as described in this Complaint, for which the Defendants should be held liable and responsible in an amount to be determined by a jury that is in excess of the sum of Seventy-five Thousand Dollars (\$75,000.00);

- b. Punitive damages in an amount determined by a jury;
- c. A judgment in favor of the Plaintiff and against the Defendants under the pendent state law claims for violation of the Arkansas State Constitution and for tortious interference with contract, sustained by the Plaintiff as a result of the policy and conduct of the Defendants, in an amount to be determined by a jury in excess of Seventy-five Thousand Dollars (\$75,000.00);
- d. A declaratory judgment finding that Defendants effectuated a custom and policy to forgive fees owed to Plaintiff by probation clients (under the "Amnesty Program"), in violation of (1) Article 1, section 10 of the United States Constitution (Contracts Clause); (2) The Fifth Amendment to the United States Constitution (Takings Clause); and (3) Article 2, section 22 of the Constitution of the State of Arkansas (Property Rights);
- e. Injunctive Relief enjoining Defendants from executing a custom and policy to forgive fees owed to Plaintiff by probation clients (under the "Amnesty Program"), in violation of (1) Article 1, section 10 of the United States Constitution (Contracts Clause); (2) The Fifth Amendment to the United States Constitution (Takings Clause); and (3) Article 2, section 22 of the Constitution of the State of Arkansas (Property Rights);

- f. A judgment in favor of the Plaintiff and against the Defendants for the Plaintiff' reasonable attorneys' fees pursuant to 42 U.S.C. §1988, plus all costs of this action and all of the Plaintiff's related litigation costs, litigation fees, and litigation expenses, as well as pre-judgment and post-judgment interest as allowed by law;
- g. A judgment in favor of the Plaintiff and against the Defendants for such other relief, either general or specific, which the Court may deem appropriate in law or equity and for which the Plaintiff duly prays.

RESPECTFULLY SUBMITTED, this the 29th day of June, 2017.



John Timothy Edwards (Arkansas Bar No. 2010111)

Randall J. Fishman (Tennessee Bar No. 7097)

pro hac vice admission pending

Richard S. Townley (Tennessee Bar No. 28164)

pro hac vice admission pending

Kevin McCormack (Tennessee Bar No. 29295)

pro hac vice admission pending

Joseph E. Horowitz (New York Bar No. 4201026)

pro hac vice admission pending

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jhorowitz@bbfpc.com

ATTORNEYS FOR PLAINTIFF

THE JUSTICE NETWORK, Inc.

Probation Fee Agreement

This agreement is made and entered into this _____ day of _____, 2016, by and between _____, the client, and The Justice Network, Inc. to carry out the Probation and/or sentencing options ordered by the presiding Court of Craighead County, Arkansas in the following manner: for services rendered by The Justice Network, Inc., the client agrees to pay the fees as follows:

INITIAL

_____ Months Probation @ \$35 per month \$ _____
 _____ Probation Extension Fee @ \$35 per month \$ _____
 _____ Other: _____ \$ _____

TOTAL: \$ _____

A late charge of five dollars (\$5.00) will be charged each month if payments are not received by the 5th day of the month. Any retainer fee provided for is non-refundable. The client hereby agrees to pay all expenses in advance. If installment payments are provided for, upon failure to make payment in full of any installment, all outstanding fees shall at once become due and payable at the option of The Justice Network, Inc. Should this agreement be placed in the hands of an outside collection agency or an attorney for enforcement, the client will pay all costs of enforcement, together with a reasonable attorney fee. I agree to be contacted by The Justice Network, Inc. even if I am on a Do Not Call list. In addition, I consent to be called at the phone number provided or any future phone numbers provided by me, including cellular, which may be for the purpose of collection of fees.

CLIENT SIGNATURE _____

DATE _____

SOCIAL SECURITY NUMBER _____

WITNESS SIGNATURE _____

DATE _____

DATE IN: ____/____/____ START DATE: ____/____/____ DATE OUT: ____/____/____

DIVISION: _____ ATTORNEY: _____ PUBLIC DEFENDER

TKT # _____ OFFENSE _____

TKT # _____ OFFENSE _____

TKT # _____ OFFENSE _____

DWIS #1 _____ #2 _____ Fines OUT PT @ _____ IN PT @ _____ AA/NA (____) per wk / mo
 STOPLIFTING AMC @ JNET _____ DIM _____ DDS DOS _____ Hours PSW Drug Tests
 LIFE SKILLS DVC @ JNET _____ DIM _____ HCC MADD _____ DAYS JAIL (____) DAYS SUSP)

Other: _____ By: ____/____/____

Prohibited from contacting

JUDGE _____

EXHIBIT

tabbler
A

F: JNI INTAKE

THE JUSTICE NETWORK, Inc.

Public Service Fee Agreement

This agreement is made and entered into this _____ day of _____, 2016, by and between _____, the client, and The Justice Network, Inc. to carry out the Probation and/or sentencing options ordered by the presiding Court of Craighead County, Arkansas in the following manner: for services rendered by The Justice Network, Inc., the client agrees to pay the fees as follows:

INITIAL

_____ Hours Public Service @ \$15 per month for _____ Months \$ _____
 _____ X \$25 Public Service Processing Fee \$ 25.00
 _____ Public Service Extension Fee @ \$15 per month for _____ Months \$ _____
 _____ Post Contempt of Court Fee @ \$15 per month for _____ Months \$ _____

TOTAL: \$ _____

A late charge of five dollars (\$5.00) will be charged each month if payments are not received by the 5th day of the month. Any retainer fee provided for is non-refundable. The client hereby agrees to pay all expenses in advance. If installment payments are provided for, upon failure to make payment in full of any installment, all outstanding fees shall at once become due and payable at the option of The Justice Network, Inc. Should this agreement be placed in the hands of an outside collection agency or an attorney for enforcement, the client will pay all costs of enforcement, together with a reasonable attorney fee. I agree to be contacted by The Justice Network, Inc. even if I am on a Do Not Call list. In addition, I consent to be called at the phone number provided or any future phone numbers provided by me, including cellular, which may be for the purpose of collection of fees.

CLIENT SIGNATURE

DATE

SOCIAL SECURITY NUMBER

WITNESS SIGNATURE

DATE

TOTAL HOURS	_____	DIVISION(s)	_____
AGY	TKT # _____ (____ - ____)	OFFENSE	_____ hrs
AGY	TKT # _____ (____ - ____)	OFFENSE	_____ hrs
AGY	TKT # _____ (____ - ____)	OFFENSE	_____ hrs
AGY	TKT # _____ (____ - ____)	OFFENSE	_____ hrs

Notes: _____

JUDGE : _____ Blackman _____ Huckaby Other: _____

F: JN1 PSW INTAKE

IN THE CIRCUIT COURT OF CRAIGHEAD COUNTY, ARKANSAS

State of Arkansas
City of
v.
Defendant
Date of Birth
No.
Charge(s):

ORDER OF PROBATION / SUPERVISION

On the day of 20, came before this Court the above-entitled matter. The defendant, has entered a plea of guilty or has been convicted of the above-listed charge(s), and has been sentenced to days in the Craighead County Detention Center; it is further ordered that the imposition of days of the sentence is hereby suspended and said defendant is hereby placed on supervised probation as follows:

Probation is for a period of months and shall end on unless otherwise extended by this Court. Probation shall be supervised by a Case Officer of THE JUSTICE NETWORK, INC., 906 S. Main St., Jonesboro, Arkansas 72401.

Probation is to be extended for a period of months. Any extended probation term shall be added to the end of the original sentence. All prior special conditions must be completed. Probation shall be supervised by a Case Officer of: THE JUSTICE NETWORK, INC., 906 S. Main St., Jonesboro, Arkansas 72401.

- 1. The defendant shall comply with these rules:
a. Obey all federal, state and local laws.
b. Immediately report all arrests and traffic citations, regardless of disposition, to your Case Officer.
c. Report or meet with your Case Officer as directed.
d. Pay fines and costs imposed by this Court.
e. Keep your Case Officer informed and updated as to your address, phone number(s) and place of employment.
f. Do not use, sell, distribute or possess any controlled substance, unless said substance is legitimately prescribed to you by a physician and/or you are authorized to do so by law.
g. Work faithfully at suitable employment.
h. Do not possess or drink alcoholic or intoxicating beverages.
i. Submit to drug and/or alcohol testing as directed by the Case Officer.
j. Pay the probation supervision fee in the amount of thirty-five dollars (\$35.00) each month for the period of supervised probation, such payment to be made to The Justice Network, Inc.
k. Allow searches of home, vehicle, person or other property at any time requested by probation officer or law enforcement officer.

2. The defendant must also comply with the additional special conditions as indicated:

Do not possess firearms or other prohibited weapons.
AA / NA meetings times per week
DWI School Level I Level II
MADD Class
Parenting Class
Life Skills Classes
Drug Offender School
Hot Check Class
Stoplifting Class
Inpatient Counseling @
Outpatient Counseling @
Domestic Violence Classes @
Anger Management Classes @
Public Service Work for hours
Make restitution to the victim(s) in the amount of \$
Have no contact with
Other:

3. Classes, counseling, restitution, fines, probation fees and/or public service must be completed and proof provided to The Justice Network before probation is completed.

I, the above named defendant, have read or have had read to me the foregoing Order. I understand that if I fail to comply with any term or condition, my probation could be revoked, additional charges may be filed, and/or I may be ordered to serve jail time in addition to my original sentence. Further, I understand that I will not move from or reside outside Craighead County until the Case Officer gives me permission to do so.

IT IS SO ORDERED.

Circuit Judge

Date

Defendant
Address
Phone Number

