



JC-OH-0004-0002

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

LLOYD D. ALKIRE,
on behalf of himself and all
other persons similarly situated,

Plaintiffs,

vs.

THE HONORABLE JANE IRVING,
Judge, in her official and personal capacities,
et al.,

Defendants.

) CASE NO. 5:96 CV 2687
)
) JUDGE DOWD
)
) **STIPULATION OF SETTLEMENT**
) **BETWEEN PLAINTIFF AND**
) **DEFENDANTS JUDGE JANE IRVING,**
) **HOLMES COUNTY COURT, AND**
) **HOLMES COUNTY**
)
)
)

Plaintiff Lloyd D. Alkire ("Plaintiff"), on behalf of himself and a putative class, has alleged that the Honorable Judge Jane Irving, the Holmes County Court, and Holmes County ("Defendants") denied him and others similarly situated their rights under the Constitution and other applicable laws.

Plaintiff has sought prospective relief on behalf of the putative class to require compliance with the Constitution and other laws as to individuals who will in the future appear before Judge Irving and the Holmes County Court, including those accused of contempt of court for failure to appear, or for nonpayment of fines or costs. Defendants' answer to the complaint denies all claims and raises numerous defenses.

Plaintiff maintains that he, individually and as class representative, would ultimately prevail, but deems this proposed settlement of only his claims for prospective declaratory and injunctive relief to be in his best interest and in the best interests of the class. Defendants deny

all liability whatsoever, and maintain that they would ultimately prevail on all issues in this action, but deem the proposed settlement of only plaintiff's claims for prospective declaratory and injunctive relief to be in their best interests.

The Court has not ruled on any substantive contentions as to the validity of the Plaintiff's claims, or any liability or non-liability of the Defendants, nor has the Court expressed any opinion with respect thereto, nor do the parties to this Stipulation make any admission or concession on these substantive issues.

NOW, THEREFORE, IT IS STIPULATED AND AGREED by and among the Plaintiff and Defendants that the claims for prospective declaratory and injunctive relief shall be settled and compromised, subject to the approval of the Court, upon the conditions hereinafter set forth, with the express understanding that all other claims remain pending for later determination.

- A. Dismissal of Certification for Injunctive Relief.** Since this Stipulation is intended to benefit of persons who now or will in the future appear before the Holmes County Court, and since these persons have standing to enforce the terms of this Stipulation as if they were parties to it, but without the necessity for joinder, the parties agree that class certification for injunctive relief is unnecessary and plaintiff's motion for certification pursuant to Rule 23 (b)(2) should be dismissed.
- B. Submission of Stipulation.** Plaintiff and the Defendants shall promptly submit this Stipulation to the Court and jointly request the Court to approve it pursuant to Federal Rule of Civil Procedure 23(e) and to enter its terms as a final order pursuant to Federal Rule of Civil Procedure 58. They agree to cooperate with each other and with the Court to that end.
- C. Consideration for Settlement given by Plaintiff.** In consideration of the agreements made by Defendants, plaintiff's claims for prospective relief are hereby compromised and settled. The parties stipulate that retention of defendant Holmes County Court as a party is unnecessary since the other Defendants will be subject to provide whatever relief (if any) the Court may otherwise award. Consequently, the Holmes County Court should be dismissed as a party pursuant to this Stipulation.

D. Consideration for Settlement given by Judge Irving and Holmes County. Defendants deny violating the rights of Plaintiff or any member of the plaintiff class at any time. It is and has always been the policy of these Defendants to comply with the Constitution and other applicable laws as to all matters venued in the Holmes County Court. However, to resolve this case and document Defendants' compliance with law, and in consideration of the agreements made by Plaintiff, Judge Irving in her personal and official capacities and Holmes County, on their behalf and on behalf of the Holmes County Clerk, and all employees and agents thereof, agree Defendants will maintain, comply with, implement and require satisfaction of each of the following policies.

1. Court Cost Policy. No person should or will be subject to arrest or incarceration, or to any other actual or threatened deprivation of liberty (including an order to appear or to show cause), in connection with or as a consequence of any failure to pay court costs. Whether directly or indirectly, Defendants will not perform or cause, or permit others to perform or cause, any action inconsistent with this policy. Nothing in this policy limits in any fashion the lawful use of the garnishment, attachment, or execution against property remedies otherwise available for collection of criminal fines or costs under Ohio law.

2. Fines Policy. No person should or will be subject to arrest or incarceration, or to any threat thereof, or any other actual or threatened deprivation of liberty (including an order to appear or to show cause), in connection with or as a consequence of any failure to pay a fine, unless the records of the Holmes County Court affirmatively document that each of the following steps have first been satisfied in the following order :

- A. A hearing satisfying each procedural element of R.C. § 2947.14 (B) and/or (C), as applicable, was timely held and properly journalized with a summary of the facts on which the Court based an express finding of ability to pay beyond a reasonable doubt, using the form attached as Exhibit A;
- B. Proper service was made upon the defendant of a journalized order signed by the Judge, specifying defendant's payment obligations and the Judge's findings upon ability to pay, as well as a conspicuous warning that refusal to pay to the extent so determined could result in the defendant's arrest and incarceration; and
- C. The defendant fails thereafter to pay in accordance with the journalized finding.

Upon such a record, the Judge may enter an order to appear which incorporates and attaches a certified copy of the prior entry determining ability to pay. The order to appear must be properly served upon the defendant. The order to appear shall conspicuously notify the defendant that:

- D. She or he is subject to arrest and/or incarceration upon a failure to appear, or if the evidence of record at the hearing establishes that the defendant has failed to pay despite the ability to pay;
- E. If he or she claims good cause for nonpayment (which includes a change in ability to pay), the defendant may not be convicted of contempt or incarcerated unless the evidence of record at the hearing proves lack of good cause beyond a reasonable doubt;
- F. She or he has a right to counsel, including a right to appointed counsel if indigent under the annually-updated Guidelines for Determining Indigency of the Ohio Public Defender's Commission; and
- G. A description of how the defendant may obtain appointed counsel immediately in order to prepare for the hearing.

Nothing in this Stipulation prohibits the Judge from waiving the power to incarcerate upon matters arising from the hearing, as an alternative to appointment of counsel in that hearing, provided that waiver is made on the record and prior to the commencement of the hearing.

If the defendant fails to appear, the Judge may issue a bench warrant for failure to appear on show cause order, using the warrant form attached as Exhibit B. Upon such an arrest, the defendant will be brought before the Holmes County Court forthwith, as required under Revised Code Chapter 2707.

- I. Any person who appears or is brought before the Holmes County Court on bench warrant for failure to appear or failure to pay may only be convicted of contempt and/or incarcerated if the evidence of record presented at a hearing complying with the procedural requirements of R.C. § 2947.14 establishes beyond a reasonable doubt that person is guilty of criminal contempt. Unless such person claims good cause for nonpayment or failure to appear (which includes a change in the ability to pay), the Judge is entitled to rely on the previous finding of ability to pay beyond a reasonable doubt.

- J. No person may be incarcerated in connection with or as a consequence of failure to pay a fine except by means of a lawful commitment order completed and signed by the Judge of the Holmes County Court, using the form attached as Exhibit C.
- K. Defendants acknowledge that R.C. § 2947.14 provides any person arrested or incarcerated in connection with or as a consequence of a failure to pay fines the right to receive credit at the rate of \$30.00 for each day of actual incarceration. If the unpaid fine is less than \$30.00, the person may be imprisoned one day.
- L. Whether directly or indirectly, Defendants will not perform or cause, or permit others to perform or cause, any acts or failures to act inconsistent with this policy. Nothing in this policy limits in any fashion the lawful use of the garnishment, attachment, or execution against property remedies otherwise available for collection of criminal fines or costs under Ohio law.

3. Probable Cause Policy. Without a judicial determination of probable cause, no person will for any reason be held after warrantless arrest beyond the *earlier* of (i) the end of the next session of the Holmes County Court, or (ii) the expiration of 48 hours after arrest. All court sessions and all evening, weekend and holiday hours are counted toward this maximum.

Defendants will require the Holmes County Clerk and all their employees and agents to enforce and comply with this policy at all times. The Clerk of the Holmes County Court and the Holmes County Sheriff's Department will be authorized and required to immediately release, on a personal recognizance bond of appropriate amount, each and every person who has not had a probable cause appearance within this maximum time frame. Defendants will develop, maintain and utilize a reliable system to track and document the date and time of arrest, the date and time of probable cause appearance or release (whichever occurs first), and the total time between these events, as necessary to ensure that no individual is held without a warrant and probable cause determination for more than 48 hours

4. Right to Counsel Policy. Every defendant has the right to counsel, to appointed counsel if indigent, and to adequate and meaningful notice of these rights in connection with any proceedings (including show cause or contempt proceedings) which could result in a loss of liberty. Indigency shall be determined in accordance with the annually-updated Guidelines for Determination of Indigency established by the Ohio Public Defender's Commission.

Defendants shall provide notice of the right to counsel, including the right to appointed counsel, to all those present by means of a general statement which will be routinely made at the beginning of each session of the Holmes County Court. Additionally, each defendant shall be individually advised of these rights on the record when the defendant's case is first called. The Judge will adopt a form which the Holmes County Sheriff will promptly provide to those held in the Holmes County Jail who wish to request appointed counsel.

Waiver of the right to counsel or of the right to appointed counsel if indigent may not be presumed. The right to counsel or to appointed counsel will be waived only when the hearing record in a defendant's case affirmatively establishes:

- A. The defendant's individual acknowledgment that her or his liberty is at stake;
- B. The defendant's individual acknowledgment of the right to counsel, including the right to court-appointed counsel if indigent; and
- C. The defendant's express and specific waiver of those rights, verbally on the record and in writing.

5. Implementation of Policies. Within thirty (30) days after approval of this Stipulation by this Court, Defendants will provide appropriate training on the provisions and requirements of this Stipulation, and the changes in any existing procedures required thereby, to all current employees and agents. Each trainee will be given an individual copy of this Stipulation and the entry adopting it as the order of the Court. Thereafter, new hires will be given an individual copy of the Stipulation and entry, and will be trained in the same manner, during the regular orientation and/or training process for their position.

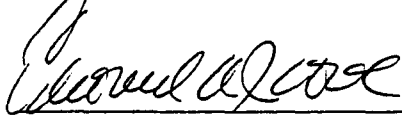
E. Notice. To promote implementation of these agreements the notice language attached as Exhibit D will:

- 1. Be reproduced at the Defendants' cost in a poster not less than 11" by 17" in size, which will thereafter be displayed at all times in a location at the Holmes County Court Clerk's office which assures it is conspicuously visible to and easily readable by persons appearing at the Clerk's counter for service; and
- 2. Be included in the general statement of rights and procedures routinely made to all those present at the start of each session of the Holmes County Court.

F. **Retention of Jurisdiction.** Any term of this Stipulation notwithstanding, the Court shall retain jurisdiction to enforce the terms of any final order entered pursuant to this Stipulation for one year after the date on which defendants certify in writing that the training of current employees and agents has been completed.

G. **Miscellaneous.** If the Court fails to approve this Stipulation or a final order based upon it, the parties to this Stipulation agree that nothing in it, or in any statement or pleading made by either party in support of it, shall be admissible on the merits of this controversy in this or any other proceeding.

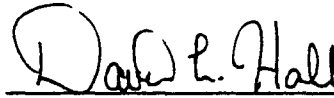
IT IS SO STIPULATED:




Edward A. Icove (0019646)
SMITH & CONDANI CO., L.P.A.
Ohio Savings Plaza Bldg. Suite 900
Cleveland, Ohio 44114
(216) 771-1760
Attorney for Plaintiff



The Honorable Judge Jane Irving,
in her personal and official capacities,
Judge of the Holmes County Court



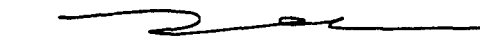
For and on behalf of Holmes County, Ohio



Lloyd A. Alkire, Plaintiff



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THE STATE OF OHIO,
HOLMES COUNTY

CASE NO. _____

vs.

JUDGMENT ENTRY DETERMINING
ABILITY TO PAY

The defendant appeared on _____ for a determination of (his)(her) ability to pay a fine of \$ _____. At this appearance, the defendant (was represented by retained counsel)(was represented by appointed counsel)(knowingly and voluntarily waived counsel in writing and verbally on the record).

The Court heard evidence concerning defendant's finances and offered defendant opportunity to present evidence of (his)(her) financial situation. That evidence is summarized in the Public Defender form attached to this entry. Based on those findings and pursuant to R.C. § 2947.14, the Court therefore:

ADJUDGES that the defendant lacks the ability to pay at this time. It is further ORDERED _____

HOLDS that these facts establish beyond a reasonable doubt that defendant has the present ability to pay \$ _____ per _____: _____

The defendant is ordered to pay accordingly until the fine and court costs are fully paid, the defendant brings a change in financial circumstances to the attention of this Court, or until further order.

JUDGE
HOLMES COUNTY COURT

ANY FAILURE TO PAY YOUR FINE AS REQUIRED BY THIS JUDGMENT ENTRY MAY BE PUNISHED BY ARREST AND/OR INCARCERATION FOR CONTEMPT OF COURT, SUBJECT TO THE RIGHTS AND RESPONSIBILITIES LISTED ON THE BACK OF THIS PAGE.

YOU CANNOT BE ARRESTED OR JAILED FOR OWING COURT COSTS

OBVERSE OF EXHIBIT A

Rights and Responsibilities

1. You have been found financially able to make the payments listed on the other side, and have been court-ordered to do so. Any failure to make those payments as ordered without good cause could result in your arrest and/or incarceration for contempt of court.
2. If you are unable to make the payments as ordered, it is **your** responsibility to tell the Court immediately so that your payment obligation can be reviewed and adjusted as necessary.
3. You cannot be arrested, jailed, or threatened with arrest or jail for nonpayment of fines unless you have been found able to pay the fine. You have the right to a lawyer, including a right to appointed counsel if you cannot afford a lawyer. **Only persons who are able to pay a fine but refuse to do so can be held in contempt of court, arrested or jailed for nonpayment of fines.**
4. Failure to pay **court costs** can result in garnishment of wages or bank accounts, and attachment and sale of non-exempt property. Constitutionally, **no one** may be arrested, jailed, or convicted of contempt of court for failing to pay court costs or failing to appear at a hearing concerning the failure to pay court costs.

If you believe any of these rights have been violated, talk to a lawyer **immediately**.
If you cannot afford an attorney, file a letter with the court asking that a **lawyer be appointed** for you.

HOLMES COUNTY COURT

EXHIBIT B

THE STATE OF OHIO,
HOLMES COUNTY

CASE NO. _____

vs.

BENCH WARRANT: FINES

TO: ANY OFFICER WITH THE AUTHORITY, GREETINGS:

On _____, this Court filed a Judgment Entry Determining Ability to Pay (certified copy attached) which found beyond a reasonable doubt that defendant was able to pay \$ _____ per _____ toward fines owed in the total amount of \$ _____. It appearing to the Court on _____ that the defendant, _____ has:

- Failed to pay as required by that Judgment Entry, specifically in that _____
- Was ordered to appear and show cause on _____ as to why defendant was not in contempt of that Judgment Entry, but did fail to appear.

THESE THEREFORE ARE TO COMMAND YOU to take the said defendant if found in your county, or, if not found in your county, that you pursue after (him)(her) in any other county in this state, and take and safely keep defendant so that you have (him)(her) forthwith before this Court.

WITNESS my signature and the seal of this Court on _____.

JUDGE
HOLMES COUNTY COURT

AMOUNT OF BOND: \$ _____

YOU CANNOT BE ARRESTED, JAILED OR REQUIRED TO APPEAR FOR NON-PAYMENT OF FINES UNLESS THE COURT HAS FIRST DETERMINED YOU HAVE THE FINANCIAL ABILITY TO PAY THE FINE BEYOND A REASONABLE DOUBT. YOU HAVE A RIGHT TO COUNSEL, INCLUDING APPOINTED COUNSEL IF YOU ARE INDIGENT, IN CONNECTION WITH THIS WARRANT.

NO ONE MAY BE ARRESTED OR JAILED FOR NOT PAYING COURT COSTS.

THE STATE OF OHIO,
HOLMES COUNTY

CASE NO. _____

vs.

COMMITMENT ON CONVICTION OF
CONTEMPT AND SENTENCE TO JAIL:
FINES

1. The defendant appeared before this Court on _____ on the charge of:
 - Failure to pay the amount of \$ _____ per _____ which this Court found to be within defendant's ability to pay beyond a reasonable doubt by Judgment Entry dated _____.
 - Failure to appear on _____ to show cause as to why defendant should not be found in contempt because of defendant's failure to pay in accordance with the prior Judgment Entry of _____ in which this Court found defendant able to pay \$ _____ per _____ beyond a reasonable doubt.

2. At this appearance, the defendant (was represented by retained counsel)(was represented by appointed counsel)(knowingly and voluntarily waived counsel in writing and verbally on the record).

3. At hearing, the Court determined the defendant's current financial situation as described in the financial affidavit attached to this Commitment Order. Additionally, from the evidence presented at hearing, the Court makes the following findings of fact as to the defendant's current ability to pay: _____

4. Based on those findings and defendant's financial circumstances, the Court finds that:

- There is insufficient evidence to establish beyond a reasonable doubt that defendant (has the ability to pay but refused to pay) (lacked good cause for failure to appear) at the time in question. Defendant is therefore found not guilty of contempt, and is released subject to the following order(s):

That defendant's financial circumstances have changed since the Judgment Entry of _____ in that _____

As a result, this Court orders _____

These facts establish beyond a reasonable doubt that defendant had the ability to pay in accordance with the prior order of _____ during the period in question, but did wilfully fail to pay and therefore is found guilty of contempt of court.

These facts establish beyond a reasonable doubt that defendant was found able to make payments toward the fine by Judgment Entry dated _____, and was properly served with the show cause order requiring defendant's appearance on _____, on which date the Court finds beyond a reasonable doubt that defendant lacked good cause for failing to appear on that date. Defendant is therefore found guilty of wilful contempt of court for failure to appear as ordered.

Having been found guilty of wilful contempt beyond a reasonable doubt, defendant is therefore sentenced to serve _____ days in the Holmes County Jail or any other correctional facility, to commence on _____ at _____, or at such time as designated by the Holmes County Sheriff's Department. One day shall consist of one 24-hour period of time. Defendant shall receive \$30.00 credit toward the total fine owed of \$ _____ for each day or portion thereof defendant is held.

That defendant is hereby ordered to _____

SO ORDERED.

JUDGE
HOLMES COUNTY COURT

Release Date: _____

Released by: _____

Date Commitment Received _____ By Whom _____

EXHIBIT D

To the extent you have the ability to make payment, the Holmes County Court asks that fines and court costs be paid, or arrangements for payment made, immediately after sentencing.

→ No one can be arrested, jailed, or threatened with arrest or jail for nonpayment of fines unless the Court first holds a hearing to determine that person's financial ability to pay the fine. The law provides a right to a lawyer for that hearing. **Only persons who are able to pay a fine but refuse to do so can be held in contempt of court, arrested or jailed.**

→ Failure to pay court costs can result in garnishment of nonexempt wages or bank accounts, and to attachment and sale of nonexempt property. Constitutionally, **no one** may be arrested, jailed, or convicted of contempt of court for failing to pay court costs or to appear at a hearing concerning the failure to pay court costs.

If you believe any of these rights have been violated, talk to an attorney **immediately**. If you cannot afford an attorney, file a letter with the court asking that **a lawyer be appointed** for you.

RETURN OF SERVICE AND WARRANT

Received this writ on the _____ day of _____, _____ at _____ o'clock ____M., and pursuant to its command, I executed it on the _____ Day of _____, _____ by taking said _____
_____ Into custody. Upon posting recognizance or bond in the amount of \$ _____,
(he)(she) was released.

FEEES

Service _____ \$ _____ Date _____
Miles (_____) \$ _____
Total _____ \$ _____ By _____
Officer Serving Writ

Obverse, Exhibit B