

**HONORABLE FRED VAN SICKLE**

JAMES H. KAUFMAN WSBA 7836  
Sr. Deputy Prosecuting Attorney  
Spokane County Prosecuting Attorney's Office  
1115 West Broadway, 2<sup>nd</sup> floor  
Spokane, WA 99260  
Phone: (509) 477-5764  
FAX: (509) 477-3672  
Email: jkaufman@spokanecounty.org

FRANK CONKLIN WSBA 4325  
C.K. Powers P.S.  
818 West Riverside # 640  
Spokane, WA 99201  
Phone: (509) 747-6877  
FAX: (509) 747-6950  
Email fjconklin@yahoo.com

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON**

SHAWN HUSS, a single man, and ) Cause No. CV 05 180 FVS  
others similarly situated )

Plaintiff )

**ANSWER TO SECOND  
AMENDED COMPLAINT**

Vs )

SPOKANE COUNTY, a municipal )  
Corporation )

Defendant )

\*\*\*\*\*

1  
2 COMES NOW Defendant Spokane County by and through James H.  
3 Kaufman, Senior Deputy Prosecuting Attorney and Frank Conklin and in response  
4 to the allegations contained in Plaintiff's Second Amended Complaint, admits,  
5 denies, and alleges as follows:

6  
7 **I. INTRODUCTION,**

8 1.1 In answer to the allegations contained in paragraph 1.1 of Plaintiff's  
9 Second Amended Complaint, Defendant Spokane County denies that its policy of  
10 collection jail intake fees is illegal or violates the due process clause of the XIV  
11 Amendment.

12  
13 **II. JURISDICTION AND VENUE:**

14 2.1 In answer to the allegations contained in paragraphs 2.1 through 2.4 of  
15 Plaintiff's Second Amended Complaint, Defendant Spokane County admits the  
16 same.

17  
18 **III. PARTIES**

19 3.1 In answer the allegations contained in paragraph 3.1 of Plaintiff's  
20 Second Amended Complaint, Defendant Spokane County is without knowledge or  
21 information sufficient to form a belief as to the truth of the allegations therefore  
22 denies the same.



1 4.6 In answer the allegations contained in paragraph 4.11 of Plaintiff's  
2 Second Amended Complaint, Defendant Spokane County admits the same.

3 4.7 In answer the allegations contained in paragraph 4.12 of Plaintiff's  
4 Second Amended Complaint, Defendant Spokane County admits the Defendant  
5 was arrested but denies that the domestic violence complaint was frivolous.  
6

7 4.8. In answer the allegations contained in paragraphs 4.13 and 4.14 of  
8 Plaintiff's Second Amended Complaint, Defendant Spokane County admits the  
9 same and specifically admits that at the time he was incarcerated the funds he had  
10 upon his person were lawfully taken and applied to his obligation to pay the  
11 booking fee.  
12

13 4.9 In answer the allegations contained in paragraph 4.15 of Plaintiff's  
14 Second Amended Complaint, Defendant Spokane County admits there was no  
15 formal explanation of return of the fee, but otherwise denies the remainder of the  
16 same.  
17

18 4.10 In answer the allegations contained in paragraph 4.16 of Plaintiff's  
19 Second Amended Complaint, Defendant Spokane County is without knowledge or  
20 information sufficient to form a belief as to the truth of this averment and therefore  
21 denies the same.  
22  
23  
24

1 4.11 In answer the allegations contained in paragraphs 4.17 and 4.18 of  
2 Plaintiff's Second Amended Complaint, Defendant Spokane County admits the  
3 same.

4 4.12 In answer the allegations contained in paragraph 4.19 of Plaintiff's  
5 Second Amended Complaint, Defendant Spokane County admits the allegations of  
6 this paragraph with the caveat that unlike the vast majority of persons similarly  
7 situated, Mr. Huss did not promptly request that his money be returned when the  
8 charges were dropped, but waited nearly three (3) months to submit his request.

9 4.13 In answer the allegations contained in paragraph 4.20 of Plaintiff's  
10 Second Amended Complaint, Defendant Spokane County is without knowledge or  
11 information sufficient to form a belief as to the truth of this averment and therefore  
12 denies the same.

13 4.14 In answer the allegations contained in paragraph 4.21 of Plaintiff's  
14 Second Amended Complaint, Defendant Spokane County denies the same.

15 4.15 In answer the allegations contained in paragraph 4.22 of Plaintiff's  
16 Second Amended Complaint, Defendant Spokane County admits that as soon as it  
17 received a request from Mr. Huss, Spokane County promptly refunded his deposit.

18 4.16 In answer the allegations contained in paragraph 4.23 of Plaintiff's  
19 Second Amended Complaint, Defendant Spokane County admits it has not  
20 refunded "constructive trust", because the legislature has not required interest to be  
21

1 paid on authorized refunds of booking fees. Spokane County admits it has not  
2 compensated Mr. Huss for being out of jail, and denies it has any obligation to do  
3 so.

4  
5 4.17 In answer the allegations contained in paragraphs 4.24, 4.25 and 4.26  
6 of Plaintiff's Second Amended Complaint, Defendant Spokane County denies the  
7 same.

## 8 **V. CLASS ALLEGATIONS**

9 5.1 Defendant Spokane County realleges each and every previous answer as  
10 if fully set forth herein.

11  
12 5.2 In answer the allegations contained in paragraph 5.2 of Plaintiff's  
13 Second Amended Complaint, Defendant Spokane County is without knowledge or  
14 information sufficient to form a belief as to the truth of this averment and therefore  
15 denies the same. Moreover, Spokane County denies that any funds were  
16 *wrongfully converted*.

17  
18 5.3 In answer the allegations contained in paragraphs 5.3 through 5.8 of  
19 Plaintiff's Second Amended Complaint, Defendant Spokane County denies the  
20 same.

## 21 **VI. CAUSES OF ACTION**

22 6.1 Defendant Spokane County realleges each and every previous answer as  
23 if fully set forth herein.



1 factual contentions are entirely lacking in evidentiary support and this entire  
2 lawsuit is brought only to needlessly increase the cost of litigation and burden the  
3 taxpayers with the cost of responding to these frivolous contentions.

4  
5 **COUNTER STATEMENT OF THE CASE**

6 RCW 70.48.390 Fee payable by person being booked provides:

7 A governing unit may require that each person who is booked at a  
8 city, county, or regional jail pay a fee based on the jail's actual  
9 booking costs or one hundred dollars, whichever is less, to the  
10 sheriff's department of the county or police chief of the city in which  
11 the jail is located. The fee is payable immediately from any money  
12 then possessed by the person being booked, or any money deposited  
13 with the sheriff's department or city jail administration on the  
14 person's behalf. If the person has no funds at the time of booking or  
15 during the period of incarceration, the sheriff or police chief may  
16 notify the court in the county or city where the charges related to the  
17 booking are pending, and may request the assessment of the fee.  
18 Unless the person is held on other criminal matters, if the person is not  
19 charged, is acquitted, or if all charges are dismissed, the sheriff or  
20 police chief shall return the fee to the person at the last known address  
21 listed in the booking records.

22 The following facts are not in dispute:

23 1) Mr. Huss was booked into the Spokane County Jail on October 31,  
24 2004 and released the following day, November 1, 2004.

2) At the time of his booking, the established booking fee for non-federal  
prisoners was \$89.12.

3) Mr. Huss had \$39.30 taken from him at the time of his booking.



1           4)     At the time Mr. Huss was booked, the procedure in place at the jail  
2 was to wait until the inmate requested any return of money taken from him to pay  
3 for booking fees.

4           5)     This policy was changed prior to the filing of this litigation and the  
5 present policy is to automatically return any money taken to pay for booking fees if  
6 the person qualifies for the legislative refund.

7           6)     As of January 6, 2005, those who are booked and released and have  
8 paid all or a portion of the \$89.12 fee but are not charged within 72 hours,  
9 automatically, and without request, have any sum they have paid for their booking  
10 fees returned.

11           7)     The intake or booking fee is also automatically refunded to those  
12 found not guilty, or the charges dismissed and where prosecution is declined.

13           8)     The Legislature does not require Spokane County to pay interest on  
14 any sums taken to pay for booking fees when and if the person qualifies for a  
15 refund.

16           9)     After receiving a request from Mr. Huss in February, 2005, his funds  
17 were returned to him by check dated 2/23/005.

18           10)    On September 11, 2001, the Spokane County Board of  
19 Commissioners, adopted a new procedure and designated Spokane County Risk  
20

1 Manager or his/her designee as the agent appointed by Spokane County to receive  
2 any claims made against Spokane County.

3 Spokane County further alleges:

4 1) The booking fee is a financial exaction or tax, enacted pursuant to the  
5 comprehensive taxing power of the State, which becomes due and payable when  
6 any person is booked into jail.  
7

8 2) This fee is not a punishment, but an admissions tax enacted for the  
9 sole purpose of compensating the County for the actual expense of booking  
10 persons into custody.  
11

12 3) Under both Washington Law, and the United States Constitution,  
13 Spokane County has every legal right to retain any funds which legally come into  
14 the possession of Spokane County, to pay this admission fee when an inmate is  
15 booked into jail.

16 4) The collection of this tax does not implicate the procedural due  
17 process clause of the Fourteenth Amendment.  
18

19 Wherefore, Spokane County, having fully answered, requests this Court to  
20 dismiss Plaintiff's cause with prejudice and to award Spokane County attorney fees  
21  
22  
23  
24

1 in order to reimburse the public for the needless cost of this litigation.

2           Respectfully submitted this 30<sup>th</sup> day of December, 2005

3  
4           /s/ James H. Kaufman

5 JAMES H. KAUFMAN WSBA 7836  
6 Sr. Deputy Prosecuting Attorney  
7 Spokane County Prosecuting Attorney's Office  
8 1115 West Broadway, 2<sup>nd</sup> floor  
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10           /s/ Frank Conklin

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 30, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification to the following: Breean Lawrence Beggs and Frank Conklin.

/s/ James H. Kaufman

JAMES H. KAUFMAN, WSBA #7836  
Sr. Deputy Prosecuting Attorney  
Spokane County Prosecutor's Office  
1115 W. Broadway – 2<sup>nd</sup> Floor  
Spokane, WA 99201  
Phone: (509) 477-5764  
Facsimile: (509) 477-3672  
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